

Report on the

BOARD OF PHARMACY
Birmingham, Alabama



Department of
Examiners of Public Accounts

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August 11, 2004

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Pharmacy** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Pharmacy** in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Ronald L. Jones
Chief Examiner

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PROFILE

Purpose/Authority:

The Board of Pharmacy was created to regulate the practice of pharmacy and the management and operations of pharmacies in Alabama and provides enforcement of pharmaceutical laws in the state. The board also registers drug distributors, manufacturers, and wholesalers. The board sets standards for recognition of schools and colleges of pharmacy. The board operates under authority of the *Code of Alabama 1975*, Sections 34-23-1 through 34-23-162 (Practice of Pharmacy Act) and Sections 20-2-1 through 20-2-140 (Uniform Controlled Substances Act).

Board Characteristics:

Members 5

Term 5 years staggered. No member can serve two full consecutive terms.

Selection Three members are appointed by the Governor.

- One practicing in a hospital, appointed from a list of three nominees submitted by the Alabama Society of Health System Pharmacists.
- One practicing in an independent pharmacy, appointed from a list of three nominees submitted by the independent pharmacist members of the Alabama Pharmacy Association.
- One practicing in a chain pharmacy, appointed from a list of three nominees submitted by the Alabama Pharmacy Association.

Two additional members are elected at large by all Alabama registered pharmacists, without restriction as to place of practice. The Board of Trustees of the Alabama Pharmacy Association selects a committee of five pharmacists who are members of the association to serve as a nominating committee. No one on the committee can be a candidate. The committee receives names of pharmacists actively engaged in pharmacy practice or administration, or both, from companies and individuals, and narrows the list of nominees to two names and places them on a ballot to be voted on by all Alabama pharmacists.

Qualifications All members of the board must be licensed pharmacists who have been licensed in Alabama for a minimum of five years and who are actively engaged in the practice of pharmacy or pharmacy administration, or both.

Racial Representation No statutory requirement.
No minority race representation.

Geographical Representation No statutory requirement.

Consumer Representation No statutory requirement.

Other Representation The composition of the board is to reflect the demographics of the pharmacy profession. *Code of Alabama 1975*, Section 34-23-90 (h).

Compensation The members of the board are paid the same per diem and travel allowance as paid to state employees while engaged in the performance of the duties of the board and an additional daily compensation (currently \$300/day) determined by the board. *Code of Alabama 1975*, Section 34-23-91.

Operations:

Administrator Jerry Moore, Executive Director
Appointed by the board.
Current salary \$100,703.52.
Salary is set by the board.

Location 1 Perimeter Park South
Suite 425 South
Birmingham, AL 35243

Type of License or Permit Issued As of June 2, 2004

Pharmacists (Active)	6,009
Technicians (Active)	6,325
Pharmacy	1,511
Non-Resident Pharmacy	391
Mail Order Permits	107
Manufacturers/Wholesalers/Distributors	955
Medical Oxygen Retailers	370
Distributors of Ephedrine	86
Total Licensees	<hr/> 15,754

Renewal Licenses/Permits expire annually, on December 31 and are delinquent after the last day of the following February. (New legislation enacted in 2004 establishes biennial renewal, see significant items.)

Examinations Examinations are offered daily through Sylvan Learning Centers. Applicants must achieve a 75 on the National Boards of Pharmacy examination and the Multi-state Pharmacy Jurisprudence Exam (MPJE).

Continuing Education	<p>Pharmacist – fifteen (15) hours of continuing education annually, three (3) hours of which must be “live” continuing education. Hours of credit in excess of the minimum annual requirement can be carried forward for credit in the succeeding calendar year, not to exceed 12 hours. Administrative Rule 680-X-3-.04 Alabama Uniform Controlled Substances.</p> <p>Technician – three (3) hours of continuing education annually, one (1) hour of which must be “live” continuing education. Administrative Rule 680-X-2-.14(10)(a).</p>
Reciprocity	<p>Yes, provided the applicant furnishes satisfactory proof that he or she has been licensed to practice pharmacy by examination in another state that under like conditions grants reciprocal licensure without examination to pharmacists licensed by examination in Alabama, provided that the requirements in the state from which the applicant is reciprocating were no less than the requirements of the National Association of Boards of Pharmacy. Each applicant for licensure by reciprocity must be personally interviewed by two or more members of the board before being granted a license and the applicant must pass a written examination on the laws governing the practice of pharmacy in Alabama. <i>Code of Alabama 1975</i>, Section 34-23-51.</p>
Employees	11
Legal Counsel	<p>(3) Private Attorneys contracted for by board: James S. Ward James Hampton, Hearing Officer Vance L. Alexander, Hearing Officer</p>
Subpoena Power	Yes, persons and records.
Internet Presence	<p>www.albop.com - contains:</p> <ul style="list-style-type: none"> • Contact information • Downloadable application forms • Scheduled board meetings • Renewal update information • Link and contact information to CORIP (Committee On Rehabilitating Impaired Pharmacists) • Disciplinary actions from previous administrative hearings conducted by the board • Past newsletters
Attended Board Member Training	<p>Jerry Moore, Executive Director Lynda Staggs (board member)</p>

Financial Information:

Source of Funds Licensing fees, fines and interest earned

State Treasury No, operates from checking and savings accounts. *Code of Alabama 1975*,
Section 34-23-91

Unused Funds Retains unexpended funds

SIGNIFICANT ITEMS

1. The Board of Pharmacy failed to comply with the state's bid law on two occasions.

On June 12, 2002 the board purchased a three station folder/insertor from Advanced Office Products for \$11,111.90. On May 27, 2003 the board purchased eight laptop computers from Best Buy for \$20,480.00. The board did not comply with the requirements of the bid law in making these purchases.

The *Code of Alabama 1975*, Section 41-16-20 states that, "All contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving seven thousand five hundred dollars (\$7,500) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder." In addition, the *Code of Alabama 1975*, Section 41-16-24 states, "(a) The Purchasing Agent shall advertise for sealed bids on all purchases in excess of seven thousand five hundred dollars (\$7,500) by posting notice thereof on a bulletin board maintained outside the office door or by publication of notice thereof, one time, in a newspaper published in Montgomery County, Alabama, or in any other manner, for such lengths of time as the Purchasing Agent may determine . . . and (b) All bids shall be sealed when received, shall be opened in public at the hour stated in the notice, and all original bids together with all documents pertaining to the award of the contract shall be retained and made a part of the permanent file or records and shall be open to public inspection."

2. The Board of Pharmacy is charging mail-order houses an unauthorized fee and is requiring an additional permit not authorized by law. The Board of Pharmacy charges a fee of \$100 for a new pharmacy permit and improperly charges an additional fee of \$25 if the pharmacy is a mail-order house. There is no authority in the law for the board to charge an additional fee for mail order houses. The *Code of Alabama 1975*, Section 34-23-30 provides that, "Every pharmacy, hospital pharmacy, drugstore, pharmacy department, prescription department, prescription laboratory, dispensary, apothecary, or any other establishment with a title implying the sale, offering for sale, compounding or dispensing of drugs in this state shall register annually and receive a permit from the Board of Pharmacy." "Every application for a permit for a new pharmacy shall be accompanied by a fee to be determined by the board, but said fee shall not be less than \$50 nor more than \$100." The *Code of Alabama 1975*, Section 34-23-31 states that, "Every mail-order house which dispenses drugs or medicines through the U.S. mail or otherwise . . . shall obtain a permit from the State Board of Pharmacy as a condition precedent to being qualified and authorized to transact such business in the State of Alabama."

The language in Section 34-23-31 that addresses mail order pharmacies serves only to clarify that mail order pharmacies must obtain the same permit as other pharmacies. It does not establish authority for an additional separate permit. Also, no separate or additional fee is mentioned in the law for mail order pharmacies and therefore, no separate or additional fee can be collected. Various opinions of the state's Attorney General have stated that fees not specifically authorized in the law cannot be charged.

3. The Board of Pharmacy is charging fees to medical oxygen retailers that do not comply with a court ordered settlement. The board charges the following fees:

- \$200 for a new medical oxygen retailer permit;
- \$125 for a renewal permit;
- \$25 for a medical oxygen retailer, if there is a change in ownership;
- \$25 for a change in the name;
- \$25 for a change in the location of the establishment.

A final settlement approval order mandated in Civil Action No. CV-97-416-GR in the Circuit Court of Montgomery County dated February 10, 1998 states that, “Any person, company, agency, business or entity of any kind which sells or provides medical oxygen directly or indirectly . . . must obtain a Retail Medical Oxygen Supplier Permit from the Alabama State Board of Pharmacy”. “(A) The application for a permit shall be on a form supplied by the board and accompanied by a fee determined by the board. Once issued, every permit must be renewed annually accompanied by a renewal fee determined by the board.” “(D) The person, company, agency, business or entity whose name the application is made and submitted shall be the permit holder for that facility . . . **Once issued, a permit cannot be amended, transferred or assigned to another person, business or entity.**” “(F) If a permitted facility is permanently closed or has a change of ownership, the permit holder for that facility shall give notice in writing to the board of the effective date of closure or change in ownership at least ten days prior to the closure or change of ownership.” “(G) **If a permitted facility has a change in name or location, a new permit must be obtained.** Application for this new permit must be made to the board at least ten days prior to the change.”

The settlement incorporated in the court order specifically states that, “**Once issued, a permit cannot be amended, transferred or assigned to another person, business or entity.**” The board must therefore issue a new permit when a permit must be amended, transferred, or assigned to another person, business, or entity and must charge the new permit fee of \$200. This provision in the settlement renders inappropriate the board’s fees to accommodate a change in ownership, name, or location.

4. There is no statute or administrative rule providing procedures for documentation, receipt, or investigation of complaints relating to board licensees and/or illegal practices. There are no procedures for comprehensively recording, monitoring, and reporting the progress and resolution of complaints. In January 2004, the chief investigator created a word processor computer file to collect complaint information. The file contains the name and address of the complainant, the date of complaint receipt, the investigator assigned, the date the investigator was assigned to case, the date of completion and action taken on the complaint. The file does not contain the status of unresolved complaints, as the investigators do not submit reports on the status of unresolved complaints assigned to them.

5. A review of the board’s resolution of complaints revealed a weakness in complaint notification procedures utilized by the board. A sample of twelve (12) complaints was examined during this review of which five respondents and two complainants were not sent letters of resolution upon completion of the case.

6. Recent legislation changed the renewal of licenses and permits from annual to biennial, amended fees, and codified administrative rules regarding continuing education. Act No. 2004-450 effective August 1, 2004 amends Sections 34-23-30, 34-23-32, 34-23-52, and 34-23-131, *Code of Alabama 1975*, relating to permits and licenses under the Alabama State Board of Pharmacy. The act establishes and provides for biennial licensing, allows the board to determine certain fees; and establishes certain continuing education requirements.

Section 34-23-30	Amended Section 34-23-30
Pharmacy permits – annual registration.	Pharmacy permits - biennial registration (even numbered years).
New permit application fee is not less than \$50 or more than \$100.	New permit application fee is not less than \$100 or more than \$200.
Renewal fee is not less than \$25 or more than \$50.	Renewal fee is not less than \$50 or more than \$150.
Application for a permit due to transfer of ownership is not less than \$25 or more than \$50	Application for a permit due to transfer of ownership is not less than \$50 or more than \$150
Section 34-23-32	Amended Section 34-23-32
Manufacturer, bottler, packer, repackager, or wholesale drug distributor - annual registration.	Manufacturer, bottler, packer, repackager, or wholesale drug distributor - biennial registration (even numbered years).
Permit fee is not less than \$250 or more than \$1,000.	Permit fee is not less than \$500 or more than \$2,000.
Renewal fee is not less than \$125 or more than \$500.	Renewal fee is not less than \$250 or more than \$1,000.
Permit due to change of ownership is not less than \$125 or more than \$500.	Permit due to change of ownership is not less than \$250 or more than \$1,000.
Section 34-23-52	Amended Section 34-23-52
Pharmacist License – annual registration	Pharmacist License – biennial registration (even numbered years).
Renewal fee is not less than \$10 or more than \$50.	Renewal fee is not less than \$25 or more than \$150.
Late fee \$10/year	Late fee \$10/month.

Note: Section 34-23-92 gives authority to fix standards and requirements for licensure; Administrative Rule 680-X-3-.04 specifies continuing education of 15 hours per calendar year, of which 3 hours shall be live presentation.	Continuing education – 15 hours per calendar year, of which 3 hours shall be live presentation.
Section 34-23-131	Amended Section 34-23-131
Pharmacy Technician – annual registration	Pharmacy Technician – biennial registration (odd numbered years).
Note: Section 34-23-92 gives authority to fix standards and requirements for licensure; Administrative Rule 680-X-2-.14(10)(a) specifies continuing education of 3 hours per calendar year, of which 1 hour shall be live presentation.	Continuing education – 3 hours per calendar year, of which 1 hour shall be live presentation.

7. New legislation is in conflict with existing statute. The *Code of Alabama 1975*, Section 34-23-50 and Section 34-23-52 (amended by Act 2004-450) are in conflict. The amount due for licensure renewal by a pharmacist, as amended in Section 34-23-52, states that the fee shall not be less than \$25 or more than \$150. Section 34-23-50 was not amended and provides for a licensure renewal fee for a pharmacist at not less than \$10 or more than \$50.

8. At its meeting of January 28, 1986 the board formally established a policy of not paying its employees for unused leave at termination. The board now appears to be awarding payment for unused annual leave at termination on a case by case basis rather than adhering to its policy. This policy, established January 28, 1986 was not formally amended, and as late as March 26, 2002 an investigator hired by the board had signed a document acknowledging the policy, which remained in the investigator's personnel records at the time of this review. At its meeting on March 18, 2003 the board deviated from the policy and after discussions, approved payment for the accumulated unused annual leave and ½ of sick leave up to 600 hours to two investigators who were retiring effective June 30, 2003. These employees were ultimately paid \$21,190.03 and \$23,502.65 respectively on July 14, 2003. Similarly, in the March 23, 2004 board meeting another employee's pending retirement was discussed and the employee was approved to receive payment for unused leave. This employee was ultimately paid \$20,746.80 on April 3, 2004. Board employees have not received any notification of a change in policy. While it is within the board's authority to change its policies regarding payment of unused leave at termination, it is not clear that the board has done so by approving such payments on a case by case basis. This condition leaves the board potentially vulnerable to litigation based upon unequal treatment of its employees.

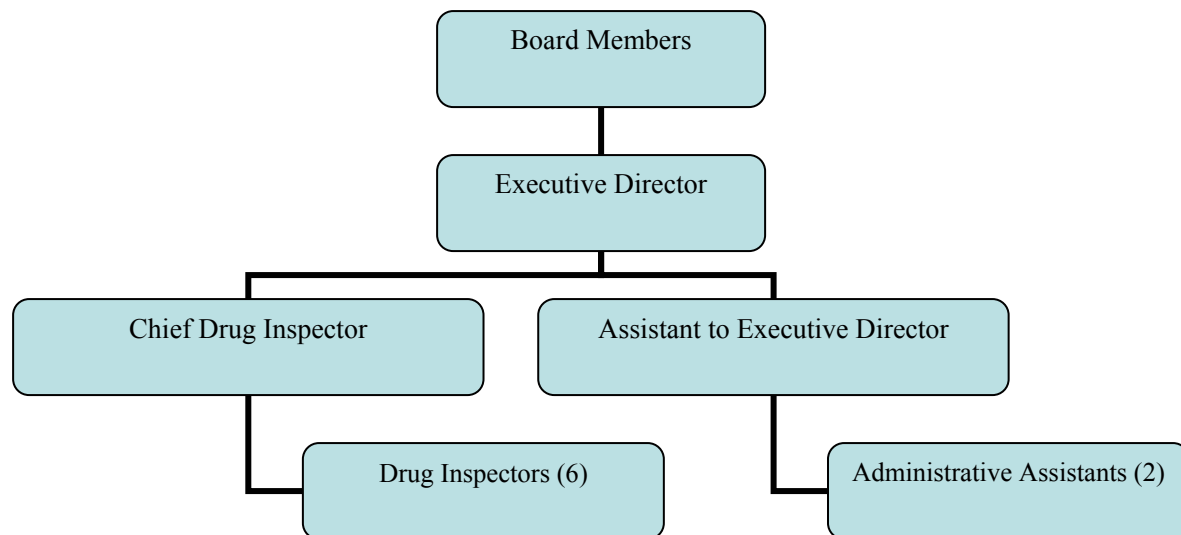
STATUS OF PRIOR FINDINGS

Previous Sunset Report dated September 13, 2000

Significant Item: Responses by the board members to a questionnaire indicate that the sale of pharmaceuticals over the Internet is an issue of great concern to the board.

Current Status: This concern is still ongoing. The board receives complaints and tries to monitor these sites: however, most are determined to be located off-shore and are therefore unlicensed and are not inspected. The board tries to educate the public regarding the dangers of drugs obtained from these sources and encourages, whenever possible, the use of sites that are designated VIPPS (Verified Internet Pharmacy Practice Site) as designated by the National Association of Board of Pharmacy.

ORGANIZATION



PERSONNEL

The Board of Pharmacy employs eleven (11) persons, all non-merit system.

Schedule of Employees

Classification	Number of Employees	Race	Gender
Executive Director	1	White	Male
Assistant to the Executive Director	1	White	Female
Administrative Assistants	2	White	Female
Investigators	7	White	Male

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 1,432

Total Expenditure per Licensee (2002-2003 Fiscal Year) - \$101.59

Number of Persons per Licensee in Alabama and Surrounding States

	Population (Estimate)*	Active Pharmacists	Persons Per Pharmacist	Facilities	Persons Per Facility
Alabama	4,500,702	6,009	749	3,334	1,350
Florida	17,019,068	20,828	817	7,003	2,430
Georgia	8,684,715	12,635	687	3,733	2,326
Mississippi	2,881,281	3,483	827	2,529	1,139
Tennessee	5,841,748	7,456	784	3,063	1,907

*July 1, 2003 Census Bureau Population Estimates Report

Notification to Licensees of Board Decisions to Amend Administrative Rules -

The board complied with procedures as provided in the state's Administrative Procedure Act, which includes submitting proposed rules to the Legislative Reference Service for publication in the Administrative Monthly, and public hearings on proposed rules. Licensees are not individually notified. According to staff members, licensees are notified 30 days before the effective date of rule changes, either through a quarterly newsletter published by the board or by separate mailing and postings on their web page at www.albop.com.

Complaint Resolution

Consumer complaints include any communication that comes into the office from a consumer, either written, emailed, or oral. A written formal complaint is required by the board from the complainant, unless the person cannot write due to either illiteracy or a disability.

Non-consumer complaints - Termed "investigations", these complaints are usually initiated by an investigator from the investigator's onsite observations, by a call from law enforcement agencies, by insurance companies, or by loss prevention personnel from chain pharmacies or pharmacists from independent settings. The board does not consider these "investigations" as complaints and did not provide addresses to facilitate our sending of questionnaires to the complaining persons/entities. Consequently, we did not solicit questionnaire responses for this type of

complaint. A complaint form is not required for this type of complaint; although individuals sometimes give written statements during the course of the investigations.

The most common types of complaints received by the board as consumer complaints and as investigative complaints are incorrectly filled prescriptions, shorted medications, dispense as written violations and costs of medications/billing issues; and theft, impairment and diversion.

There is no statute or administrative rule that provides procedures for documentation, receipt, or investigation of complaints relating to board licensees and/or illegal practices. There are no procedures for comprehensively recording, monitoring, and reporting the progress and resolution of complaints. In January 2004, the chief investigator created a word processor computer file to collect complaint information. The file contains the name and address of the complainant, the date of complaint receipt, the investigator assigned, the date the investigator was assigned to case, the date of completion and action taken on the complaint. The file does not record or report upon the status of unresolved complaints. The investigators do not submit reports on the status of unresolved complaints assigned to them. The results of administrative hearings and consent orders from complaints are recorded in the board's licensee database. Other dispositions of complaints are not.

Initial Documentation	The board requests that all complaints be filed in writing and may be submitted in person, by fax or mailed to the board office. If a person cannot write due to illiteracy or disability, the person may make an oral complaint. There may be an initial interview with the complainant prior to receiving the actual written or oral complaint. Persons filing a non-consumer complaint with the board are not required to fill out a complaint form, although a written statement is usually provided during the investigation.
Informal Disciplinary Procedure	<p>The chief investigator performs an initial review of the complaint and assigns the case to an investigator. The investigator determines if there has been a violation the Practice of Pharmacy Act or the Uniform Controlled Substances Act and submits a written report of his findings to the chief investigator.</p> <p>Both the chief investigator and the executive director review the report to determine if there is probable cause to conclude that there has been a violation. Once this determination is made, both the executive director and the chief investigator sign a complaint/case disposition form documenting the action taken on the complaint.</p> <p>The complainant is notified of outcome of the investigation. If there has been a violation of the Pharmacy Practice Act or the Uniform Controlled Substance Act, a verbal or written warning may be issued or, if further action is necessary, the final report, with all documentation is forwarded to the board's attorney for final review.</p>

Formal Hearings	<p>If the board's attorney concurs with the report, he drafts charges and prepares for an administrative hearing. Formal charges are sent to the licensee, and the person charged appears before the board</p> <p>The board is represented at the hearing by its prosecuting attorney, and the hearing is conducted by a hearing officer. The person charged may have an attorney present. Both the board and the licensee may present testimony and cross-examine.</p> <p>Board members do not participate in investigations and are not informed of the parties involved until the day of the administrative hearing.</p>
Resolution/Disposition	<p>Upon conclusion of the hearing, the board deliberates outside the presence of all parties, makes its decision, and instructs the hearing officer to draft a final order to be signed by the executive director and mailed to the parties involved.</p> <p>If the board determines that there has been a violation of the Pharmacy Practice Act or of the Uniform Controlled Substance Act, a consent order may be issued or other disciplinary action may be taken, including fines, suspensions, and revocations of licensure.</p> <p>Disciplinary actions against licensees are published in the board's newsletter and transmitted to the National Association of Boards of Pharmacy Internet website in order to facilitate the tracking of offending persons or entities.</p>
Anonymous Complaints	Anonymous complaints are not accepted.

FINANCIAL INFORMATION

Schedule of Fees

<i>Fee</i>	<i>Statutory Authority</i>	<i>Amount</i>
Original Pharmacist License	S 34-23-50	\$25.00
Pharmacist Renewal	S 34-23-52	\$25.00
Pharmacist Controlled Substance License	S 20-02-50	\$35.00

Pharmacists Controlled Substance License Renewal	S 20-02-50	\$35.00
Pharmacist/Pharmacist Assistant/ Technician Late Penalty	S 34-23-52	\$10.00/year
Assistant Pharmacist License	S 34-23-50	\$25.00
Assistant Pharmacist Renewal	S 34-23-50	\$25.00
Technician	S 34-23-131	\$20.00
Technician Renewal	S 34-23-131	\$20.00
New Pharmacy Permit	S 34-23-30	\$100.00
Pharmacy Renewal Permit	S 34-23-30	\$25.00
Pharmacy Late Penalty	S 34-23-30	\$25.00/month
Pharmacy Controlled Substance Permit & Renewal	S 20-02-50	\$100.00
Pharmacy Change of Name/Ownership	S 34-23-30	\$25.00
Reciprocity License	S 34-23-51	\$300.00
Non-resident Renewal	S 34-23-52	\$50.00
Non-resident Controlled Substance Pharmacy	S 20-02-187	\$100.00
Manufacturer/Wholesaler/Distributor Permit	S 34-23-32	\$250.00
Manufacturer/Wholesaler/Distributor Renewal	S 34-23-32	\$250.00
Manufacturer/Wholesaler/Distributor Change of Ownership	S 34-23-32	\$125.00
Manufacturer/Wholesaler/Distributor Late Penalty	S 34-23-32	\$25.00/month
Manufacturer/Wholesaler/Distributor Controlled Substance Permit & Renewal	S 20-2-50	\$100.00

Manufacturer/Wholesaler/Distributor - Precursor Chemicals License	S 20-2-187	\$250.00
Individual, Corporation, Partnership, Association or Any Other Entity Use - Precursor Chemicals Permit	S 20-2-187	\$35.00
Mail-Order House Permit	No authority See Significant Items	\$25.00
New Medical Oxygen Retailers	Final Settlement Approval Order, Civil Action No. CV-97-416-GR	\$200.00
Medical Oxygen Retailers Renewal	Final Settlement Approval Order, Civil Action No. CV-97-416-GR	\$125.00
Medical Oxygen Retailers Change In Location, Name, or Ownership	No authority See Significant Items	\$25.00
Examination Fees Transfer From Another State	S 34-23-51	\$300.00
Law Books	Cost Recovery	\$7.00
Copies for Outside Attorneys	Cost Recovery	\$0.25/per page
Duplicate License	Cost Recovery	\$10.00
Mailing Labels/Printouts	Cost Recovery	\$100.00
Board Penalties	S 34-23-13	Not to exceed \$1,000/violation

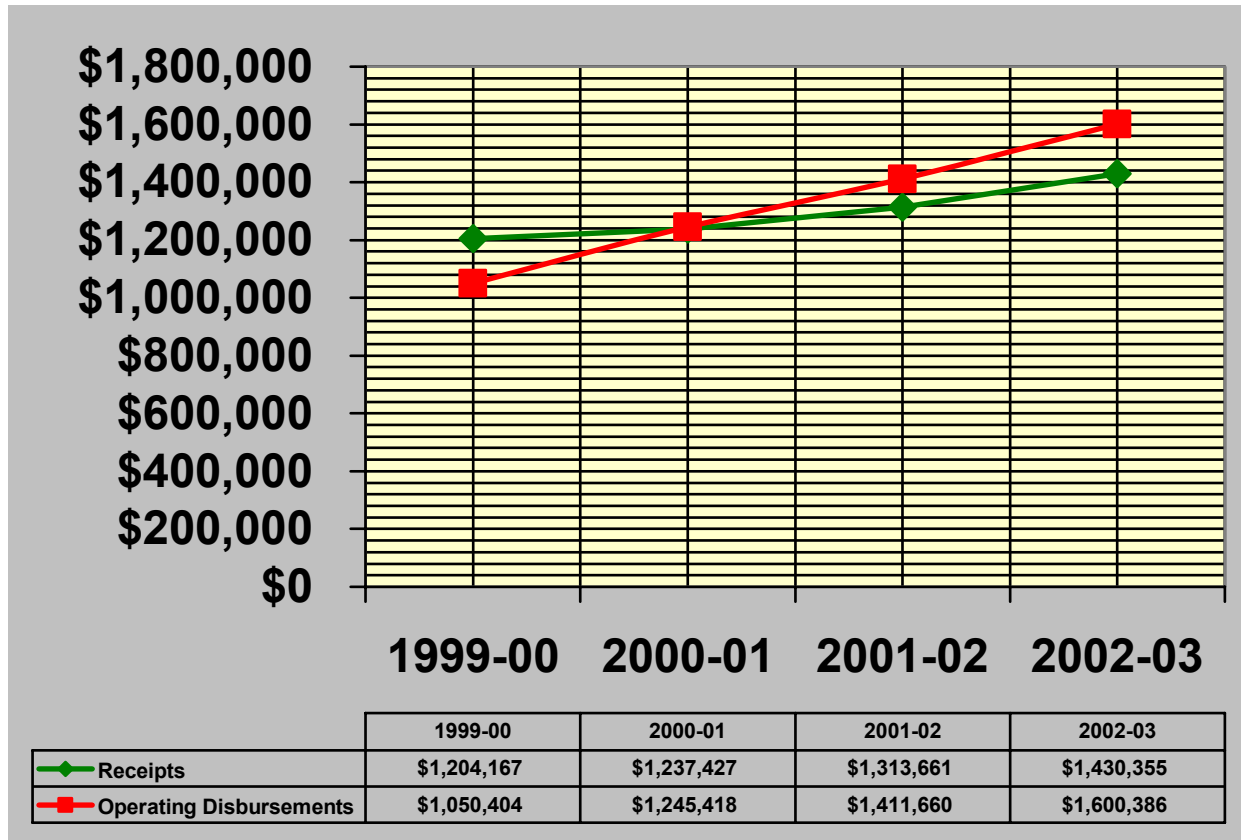
NOTE: Current legislation amended several of the fees listed below. (See Significant Item # 4, pages 7 and 8 above).

Schedule of Cash Receipts, Disbursements, and Balances

For the Period October 1, 1999 through September 30, 2003

	<u>2002/03</u>	<u>2001/02</u>	<u>2000/01</u>	<u>1999/00</u>
<u>Receipts</u>				
License & Permit Fees	\$ 1,171,195.00	\$ 1,126,470.00	\$ 1,085,400.00	\$ 1,001,265.00
Sale of Labels, Printouts, Law Books	5,808.00	4,339.40	4,698.70	6,056.00
Refunds	14,623.65	8,385.19	7,266.87	3,639.75
Penalties	224,917.50	130,105.00	94,175.00	153,809.93
Interest Income	8,310.65	14,592.23	32,982.36	38,375.93
Donations	-	5,000.00	-	-
Sale of Surplus Property	5,500.00	24,768.75	12,903.71	1,020.00
Total	\$ 1,430,354.80	\$ 1,313,660.57	\$ 1,237,426.64	\$ 1,204,166.61
<u>Operating Disbursements</u>				
Personnel Costs	760,431.96	654,979.81	587,814.41	531,144.96
Employee Benefits	132,809.13	120,723.52	109,598.38	95,478.01
Travel In-State	46,406.82	49,448.05	26,588.12	22,347.93
Travel Out-of-State	93,221.61	53,963.05	64,091.87	53,078.65
Repairs and Maintenance	4,684.23	4,831.93	3,199.44	3,691.78
Rentals and Leases	104,958.58	112,408.57	91,404.42	90,561.80
Utilities and Communications	53,221.05	34,231.42	34,488.21	29,437.61
Professional Services	119,097.56	101,991.93	89,684.28	74,292.70
Supplies, Materials, and Operating Expenses	185,182.06	147,465.46	159,214.85	113,122.62
Transportation Equipment Operations	24,030.85	19,672.40	15,790.27	15,381.30
Transportation Equipment Purchases	69,168.00	92,816.28	59,484.00	20,515.00
Other Equipment Purchases	7,173.95	19,127.90	4,060.00	1,351.75
Total Operating Disbursements	1,600,385.80	1,411,660.32	1,245,418.25	1,050,404.11
Excess (Deficiency) of Receipts over Disbursements	(170,031.00)	(97,999.75)	(7,991.61)	153,762.50
Cash Balance at Beginning of Year	756,267.59	854,267.34	862,258.95	708,496.45
Cash Balance at End of Year	586,236.59	756,267.59	854,267.34	862,258.95
Reserved for Legal Obligations	200,000.00	200,000.00	200,000.00	-
Unobligated Cash Balance at End of Year	\$ 386,236.59	\$ 556,267.59	\$ 654,267.34	\$862,258.95

Operating Receipts vs. Operating Disbursements (Chart)



QUESTIONNAIRES

Board Members

Questionnaires were mailed to all five board members. All five responded.

Question #1

What are the most significant issues currently facing the Board of Pharmacy and how is the board addressing these issues?

1. “(a) Technician diversion of controlled substances. (b) Modernization of board office and staff.”
2. “(a) Technician diversion of controlled drugs. *Hearings/better cooperation with law enforcement to prosecute offenders.* (b) Modernization of operations. *Working with Alabama Interactive for online license renewal.*”
3. “(a) Importation of foreign drugs. (b) Drug diversion.”
4. “(a) Sale of prescription drugs over the internet. *The board receives complaints and tries to monitor these sites, however, most are determined to be located off-shore and are therefore unlicensed and not inspected. The board tries to educate the public regarding the dangers of these drugs and encourages whenever possible, the use of sites that are VIPPS sites (Verified Internet Pharmacy Practice Site) as designated by the National Association of Board of Pharmacy.* (b) Importation of drugs from foreign sites. *The board mounted successful legal challenges to a number of store-front Canadian prescription drug operations and at present there are none known to the board that are operating in Alabama.* (c) Updating and modernizing data collection and processing in the board office. *The board has authorized the Executive Director to sign a contract with the same company that was successful in computerizing the office of the Insurance Commissioner and the Board of Nursing for computerizing all records in the board office. We will be offering on-line renewal for all licenses for the 2005 year with a goal of 40% on-line renewals. The board has authorized a change in banks to take advantage of additional services that will enable us to deposit monies received in a more timely manner and at the same time save the staff time.* (d) Reducing medication errors in Alabama. *The board has been planning for two years for a new position with the board that will address medication errors. We are presently interviewing for the position. The title will be Director of Education and Compliance and will address a number of needs identified by the board.* (e) Reducing drug abuse and diversion in Alabama. *The board continues to work at reducing drug abuse by promoting and supporting the Recovering Impaired Pharmacists program. We have instructed the director of this program to be present at as many state and local meetings as possible and to publish regular articles in state pharmacy journals and newsletters. We have also arranged for him to speak regularly to pharmacy students at both Auburn and Samford regarding drug abuse and diversion. We continue to educate pharmacists and technicians regarding appropriate drug therapy, particularly for pain; and how to identify fraudulent prescriptions and*

patterns of drug diversion. The board stands ready to monitor the Controlled Substances Database should the legislation be enacted as it is currently proposed. We are in the early planning stages for changes that may need to be made in the board office or staff to implement the program as efficiently and quickly as possible.”

5. *“As per our mission to protect the public health of the citizens of Alabama, Canadian drug importation and internet access to drugs pose huge risks. The board has been more successful than any other state at obtaining injunctions to prevent non-FDA approved drugs from entering our state.”*

Question #2

What changes to the Board of Pharmacy’s laws are needed?

1. “Biennial renewal of licenses/permits and centralizing place of appeals to Jefferson County.”
2. “Change law governing place of appeals to require appeals be heard in Jefferson County and biennial renewal of licenses/permits.”
3. “Biennial registration for pharmacists and technicians. This will reduce the bottleneck around the first of the year with registrations.”
4. “The legislation creating the Controlled Substances Database needs to be passed. The legislation allowing for biennial renewal of licenses needs to be passed. The legislation allowing the Board of Pharmacy to regulate PBM’s needs to be passed.”
5. “We currently have two bills before the legislature. One to make pharmacists and pharmacy technician license a two year term. This would allow a more efficient job of processing and screening applicants and renewals. A second bill would affect the appeals process of those registrants that are sanctioned by the board.”

Question #3

Is the Board of Pharmacy adequately funded?

5 Yes 0 No 0 No Response

1. “Yes, provided there are no large, unexpected expenses such as lawsuits or major equipment that is unplanned at this time. [REDACTED] and [REDACTED] are careful and prudent managers of the funds entrusted to the board.”
2. “Our funds are self-generated, but our staff does an excellent job of managing them.”

Question #4

Is the Board of Pharmacy adequately staffed?

1 Yes

4 No

0 No Response

1. "We have two staff positions open at this time."
2. "Yes, except for the vacancy created by the recent resignation of one of the office staff and the newly created position of Director of Education and Compliance for which we are currently interviewing candidates."
3. "No, I say this because we have had a recent resignation that we must fill and we are currently interviewing candidates for an education/compliance officer that has been two years in planning. Both positions should be filled soon."

Question #5

What is the purpose of the board's fiscal year end balance of unobligated funds?

1. "Most of our funds are obligated at this time."
2. "There are few, if any, unobligated funds at the end of the year. These funds are held for any unforeseen emergency expenses."
3. "I am a first year board member and I am not familiar with any unobligated funds."
4. "The monies are set aside for several purposes. First, the expenses of computerizing the office, including hardware, software, and the consulting company to accomplish the task. Second, we will be adding to the office staff. Third, there are increased legal fees associated with the increasing number of appeals of board decisions and continued efforts to prosecute internet drug sales and importation of foreign drugs. Finally, there is the great increase in fuel costs which was not projected but is necessary for our inspectors to adequately perform their duties."
5. "Our budget process has worked well in my 1-1/2 years of board participation. Any unobligated funds that might occur would probably find their way toward the significant issues coming before the board. Many times these issues arise quickly and without precedent. (See Canadian importation). Therefore, they may not be adequately covered in our budget."

Registered Pharmacists

Questionnaires were mailed to one hundred registered pharmacists. Fifty-five responded.

Question #1

Do you think regulation of your profession by the Board of Pharmacy is necessary to protect public welfare?

53 Yes 1 No 0 Unknown 1 No Opinion

Question #2

Do you think any of the Board of Pharmacy's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

12 Yes 40 No 2 Unknown 1 No Opinion

Question #3

Do you think any of the Board of Pharmacy's requirements are irrelevant to the competent practice of your profession?

13 Yes 34 No 7 Unknown 1 No Opinion

Question #4

Are you adequately informed by the Board of Pharmacy of changes to and interpretations of board positions, policies, rules and laws?

41 Yes 13 No 1 Unknown 0 No Opinion

1. "No, they are vague, poorly indexed and always subject to interpretation."
2. "No, when the board changes policies/rules concerning the filling of prescriptions, I do not receive any written correspondence informing me of a change. I do get a newsletter, occasionally. I usually get this type of info through conversations with other pharmacists or drug inspectors. It would be great if the board would update all the changes made in the Pharmacy Practice Act and Controlled Substances Act and Rules/Regulations pertaining to

each. The board needs to post the full updated version on its website. This would clarify the board's stance on a variety of topics."

Question #5

Has the Board of Pharmacy performed your licensing and/or renewal in a timely manner?

53 Yes 02 No 0 No Opinion

Question #6

Do you consider mandatory continuing education necessary for competent practice?

43 Yes 11 No 1 Unknown 0 No Opinion

1. "Actually, I think the board should increase the continuing education requirement."

Question #7

Has the Board of Pharmacy approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

47 Yes 03 No 3 Unknown 1 No Opinion

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Pharmacy doing to address the issue(s)?

1. "Medication Disease State Management with respect to Medicare Medication Plan."
"Working groups investigate provider status in the state of Alabama."
2. "I would like to see a large category of drugs created that can only be dispensed by pharmacists but do not require a prescription."
3. "The issues of companies requiring their employees to mail order, and not letting them have a choice of where to buy medicine." *"I am not aware of any actions the board is taking to protect independent pharmacies."*
4. "Internet prescriptions, mail order prescriptions these are unregulated by the Alabama Board of Pharmacy."
5. "I am currently working out-of-state, so I am unsure."

6. "Insurance companies dictating what, when and how we get paid. Also, what they will pay for and which doctors/patients should have more freedom flexibility to choose."
"Unknown."
7. "Third party mandatory participation fees."
8. "Workload of pharmacists, employers expect you to fill more and more prescriptions, but they cut the budgeted hours for technicians. Pharmacists are stressed and quality of work suffers. Pharmacists need a mandatory lunch break to close pharmacy down just as physician's offices close for lunch."
9. "Practicing pharmacists are over worked, highly stressed professionals. Creating the Pharm D and Z Degrees was a colossal mistake. BS Pharmacist should be grandfathered in through the mandatory CE yearly." *"Nothing is being done that I am aware of."*
10. "Poorly regulated mail order, PBM's and HMO's. Retail pharmacists do the bulk of patient consultation while mail order and insurance companies continue to get rich. More pressure is also needed to regulate manufacturers, and Canadian importation – example, City of Montgomery employees. I realize the state board is a regulatory institution, however, they should be given more ability to be an advocate for the profession of pharmacy. This would only improve public healthcare as we know it."
11. "Shortage of pharmacists. I do not know of anything that is being done, but I think we need to enlarge the load that technicians can perform. Also, empower pharmacists to broaden their scope of practice to bill for services performed."
12. "Ensuring the public's safety." *"The Board of Pharmacy is actively engaged to enforce laws, rules, and regulations, regarding the public safety."*
13. "Low third party dollar fees to pharmacies dispensing medications."
14. "Many issues, most the Board of Pharmacy unfortunately has no control over (insurance, mail order, Medicaid, etc.)."
15. "Many laws and policies that apply to the private practice of pharmacy within Alabama don't apply to all mail order firms. State and federal authorities need to uniform these laws and policies to make it a fair playing field. The State Board of Pharmacy states they can't change this situation."
16. "Mail order, dispensing doctors, sales from other countries, increasing restrictions/reimbursement reduction from PBM's."
17. "Canadian drugs and its impact on retail." *"Don't really know where the board stands."*
18. "Alabama Medicaid funding dilemma and the need for formulary changes has greatly increased pharmacists' responsibility of getting prior authorizations for patient's maintenance meds."
19. "Since many people besides physicians are given prescriptive authority, and these people have less knowledge of pharmacology, it would be nice if pharmacists had this privilege in controlled environments."
20. "Attaining Medicare provider status for pharmacists."
21. "Insurance involvement and control. Medicaid problems affect the everyday practice of pharmacy and bring it to a stand still at times." *"I don't think this is a problem the Board of Pharmacy can control."*
22. "Canadian pharmacy, mail order, adequate reimbursement." *"The board is doing nothing about this."*
23. "Pharmacy techs being allowed to work in pharmacy without enough training."

24. "Clinical pharmacy" drifting away from the basic practice of pharmacy and overlapping into others practice, i.e., RN, MD, dietitian."
25. "I do not know the answer to this question. I am keeping my Alabama pharmacist license active, but I have not practiced pharmacy in four years."
26. "Don't know, probably technicians with drug diversion issues. *The board seems to be catching a lot of them.*"
27. "Pharmacist to technician ratio."
28. "The role of computerization and the internet with the relationship to pharmacy practice." *"The board is constantly revising the rules and regulations."*
29. "Over prescribing of controlled substances and forged prescriptions. I hope the Board of Pharmacy is working with the State Medical Board to curtail these problems. I would like to see the use of the triplicate prescription blank for controlled substances and only allowing physicians to phone in controlled drugs."
30. "Rx by computer and mail order. Drugs from out of the country."
31. "Third party insurances. I don't believe it is an issue that the board should be addressing. Another problem would be impaired pharmacists and/or staff."
32. "Ordering medication over the internet especially controls. I understand the board has little authority over this, but need to control, need new laws."
33. "Unfair contracting policies by insurance companies, forced mail order programs by HMO's and PPO's." *"The board does nothing about this."*
34. "Since I don't practice in the State of Alabama, I would be remiss to have an opinion on issues of which I have no knowledge."
35. "Drug diversion/addiction."
36. "Mail order pharmacy services." *"Very damn little!"*
37. "Shortage of pharmacists. I think pharmacy should provide a 5-year program."
38. "Medicare reform for prescription medications and changes in prescription coverage for patients with Alabama Medicaid." *"I'm not sure what the Board of Pharmacy is doing in these areas."*
39. "Patient safety." *"By being an advocate for the public."* "Monitoring the profession." *"Setting rules and regulations, while being a friend to the profession."*
40. "We are not producing enough pharmacists and are not insuring that they have the correct attitude to work with the public." *"The board needs to do more in-depth interviews."*
41. "Legal Rx's for unnecessary narcotics." *"State Board of Pharmacy is working with Medical Board to eliminate MDs that practice this."*
42. Public opinion of pharmacists, jobs, duties and the value that they add to the healthcare industry, as opposed to mail order and Canadian purchased drugs." *"The only thing I know of is not allowing Canadian store front pharmacies."* I also think of equal importance is the workload of pharmacists and supply/demand issues." *"It seems like the board would limit openings of new pharmacies, hours limited, etc., until the shortage is resolved."*

Question #9

Do you think the Board of Pharmacy and its staff are satisfactorily performing their duties?

43 Yes 02 No 7 Unknown 3 No Opinion

1. "Yes, to the best of their abilities and limitations."
2. "Yes, however, I think they are too puffed up, too full of themselves and too judgmental when disciplining RPh's who've done something wrong."
3. "No Opinion, my impression is that the board is interested only in collecting fees and penalties. They do not assist us in a positive manner in a lot of circumstances."
4. "No Opinion, when I reported that my license didn't get to me, even though my check had been cashed, [REDACTED], administrative assistant was difficult to deal with."

Question #10

Has any member of the Board of Pharmacy or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

00 Yes 55 No 0 Unknown 0 No Opinion

Registered Technicians

Questionnaires were mailed to one hundred registered technicians. Thirty-four responded.

Question #1

Do you think regulation of your profession by the Board of Pharmacy is necessary to protect public welfare?

 31 Yes 01 No 0 Unknown 2 No Opinion

Question #2

Do you think any of the Board of Pharmacy's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

 03 Yes 27 No 3 Unknown 1 No Opinion

Question #3

Do you think any of the Board of Pharmacy's requirements are irrelevant to the competent practice of your profession?

 05 Yes 25 No 4 Unknown 0 No Opinion

Question #4

Are you adequately informed by the Board of Pharmacy of changes to and interpretations of board positions, policies, rules and laws?

 23 Yes 05 No 6 Unknown 0 No Opinion

1. "The newsletter is appreciated."

Question #5

Has the Board of Pharmacy performed your licensing and/or renewal in a timely manner?

 32 Yes 01 No 1 No Opinion

Question #6

Do you consider mandatory continuing education necessary for competent practice?

24 Yes 09 No 0 Unknown 1 No Opinion

1. "Most CE's seem like ads to me. But I see the importance of staying current."

Question #7

Has the Board of Pharmacy approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

19 Yes 09 No 6 Unknown 0 No Opinion

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Pharmacy doing to address the issue(s)?

1. "I feel only a RN or doctor should be allowed to call in prescriptions. Many times receptionists will call this in and the drug is not annunciated correctly. Also, non-medical personnel (receptionist) should not be allowed to give IM shots, etc."
2. "Third party contractors."
3. "Medicaid unable to pay for prescription."
4. "Misuse of drugs in the pharmacy area in different pharmacies in the state of Alabama."
"The Board is doing a good job so far, I have not been in this line of work very long, but I am learning everyday what is going on in the state and work area."
5. "The rising cost of drugs." *"I'm not sure what the Board of Pharmacy is doing."*
6. "I think the most significant issue that we have problems with is prescription fraud. People making fake prescriptions off of a computer."
7. "Lack of Medicaid funds."
8. "Underpaid pharmacy technicians."
9. "Regulating the sales of class 2 drugs. Checking on forged prescriptions and doctors writing of class 2 drugs."
10. "Compounding restrictions for vets concern me. This is an important practice, as commercially available meds are not designed for animal use."
11. "As of March 1, 2004, Medicaid is no longer paying for a lot of drugs they once were and our pharmacy is providing Prior Authorization Forms to get these drugs covered or changed to something equivalent they will pay for."
12. "I think technicians should receive more money for all the work technicians have to do, and the certification test should be more affordable."

Question #9

Do you think the Board of Pharmacy and its staff are satisfactorily performing their duties?

 23 Yes 01 No 9 Unknown 1 No Opinion

Question #10

Has any member of the Board of Pharmacy or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

 00 Yes 31 No 3 Unknown 0 No Opinion

Manufacturers/Wholesalers/Distributors/Mail Order Firms

Questionnaires were mailed to one hundred licensees. Fifty-three responded.

Question #1

Do you think regulation of your company's business by the Board of Pharmacy is necessary to protect public welfare?

30 Yes 19 No 0 Unknown 4 No Opinion

1. "At its current levels, Board of Pharmacy ensures or helps ensure safe practices."
2. "My business is regulated by DEA. This is sufficient. I am a wholesale distributor of ephedrine/pseudoephedrine."

Question #2

Do you think any of the Board of Pharmacy's laws, rules, and policies are an unnecessary restriction on the practice of your company's business?

09 Yes 36 No 4 Unknown 4 No Opinion

1. "They are consistent with safe practice and, incidentally, Medicare requirements and OGA recommendations."

Question #3

Do you think any of the Board of Pharmacy's requirements are irrelevant to the competent practice of your company's business?

17 Yes 27 No 3 Unknown 6 No Opinion

1. "The requirement that all nuclear pharmacies have a microscope. We're a pet nuclear pharmacy, we don't use a microscope."

Question #4

Are you adequately informed by the Board of Pharmacy of changes to and interpretations of board positions, policies, rules and laws?

24 Yes 16 No 7 Unknown 6 No Opinion

1. "Unknown, I am recently licensed."

Question #5

Has the Board of Pharmacy performed your licensing and/or renewal in a timely manner?

48 Yes 00 No 5 No Opinion

Question #6

What do you think is the most significant issue(s) currently facing your company's business in Alabama and what is the Board of Pharmacy doing to address the issue(s)?

1. "Current rules and regulations regarding pharmaceutical waste disposal are not being enforced against its generators. Pharmacies, nursing homes, hospitals, dentists, animal clinics, manufacturers, etc. Simply placing the pharmaceuticals in dumpsters or sewer systems does not meet regulations, as the majority of them do. Generators with medical waste pick ups throw all their pharmaceuticals in med waste containers and your department is allowing it to be deemed med waste. This practice does not make it medical waste. With this disposal method it eventually ends up in drug dealers hands, in our landfills and waste streams. Existing rules state that all pharmaceutical waste must be incinerated not hydroclave or autoclave. I find it quite disturbing that the Board of Pharmacy only chooses to enforce the laws that its staff elects to enforce in Alabama. The public welfare should be protected. That can only happen if the laws are enforced. Additionally, according to the state there are no transporters in Alabama currently licensed by the department to transport narcotic pharmaceutical drugs. I have seen first hand everything from morphine to oxyContin on regular transport trucks with no license off loading at the incinerator. Wonder why we have prescription drug problems in Alabama?"
2. "The bad economy." *"I don't think the Board of Pharmacy could have any impact on that."*
3. "The Board of Pharmacy has always been prompt in assisting us with any issues that have come up. We are very lucky to have such an efficient and friendly staff at their office."
4. "We are a new business and the Board of Pharmacy was very helpful and patient with us as we got started and asked a lot of questions."
5. "Out-of-state mail order and prescriptions to Canada are hurting the Alabama business and the state. Every time a prescription goes out of state or to Canada, the state loses sales tax money and income tax money. Why does the state continue to promote such?"
6. "We do not think the Board of Pharmacy needs to address any issue of our company."
7. "Not possible for the Board of Pharmacy to address the most significant issues facing our company."
8. "Reimbursement issues." *"Unknown."*
9. "Regulating oxygen in a dialysis facility as if we were a retail store isn't parallel. New requirements each year without notice is frustrating. Personal interpretation of rules is confusing."

Manufacturers/Wholesalers/Distributors/Mail Order Firms Questionnaires

10. "The most significant issues currently faced by us are Medicare/Medicaid fiscal instability, and threats to reduce reimbursement." *"The Board of Pharmacy has nothing to do with these issues."*
11. "RPh shortage." *"Changed the pharmacist/technician ratio, which helped."*
12. "The board does a good job. I'm just not sure if small home-based businesses should have the same requirements as drug stores since we don't sell all those narcotics."
13. "All issues have been with DEA and/or FDA. *My Board of Pharmacy license is irrelevant in my opinion.*"
14. "Insurance."
15. "Based on the Inspection Checklist, ***Code of Alabama 1975***, Sections 34-23-1, 34-23-32, Rule 680-x-2-.23 our facility in Alabama has not been inspected since 1994. I think an inspection is due."
16. "The continued sale of ephedrine products." *"Unknown."*
17. "The mail order pharmacy industry is not paying taxes on all prescriptions filled due to a law stating only prescriptions for Alabama residents. This is a law which should be revised."
18. "High cost of business due to unnecessary over regulation."
19. "Compounding issues." *"The board has issued a statement pertaining to compounding pharmacy issues."*
20. "Complying with all new regulations by federal agencies governing our industry."
21. "There are so many key issues relating to my business that are significant. But I am glad that the Pharmacy Board issues the actual oxygen license annually, because by doing so they justify all businesses that are open for business."

Question #7

Do you think the Board of Pharmacy and its staff are satisfactorily performing their duties?

 38 Yes 02 No 8 Unknown 5 No Opinion

Question #8

Has any member of the Board of Pharmacy or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

 00 Yes 51 No 2 Unknown 0 No Opinion

Complainants

Questionnaires were mailed to one hundred complainants. Forty-eight responded.

Question #1

Was your complaint filed with the Board of Pharmacy by:

32 Mail 12 Phone 5 Fax 1 Other Unknown

Question #2

Was receipt of your complaint promptly acknowledged?

38 Yes 8 No 2 Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Board of Pharmacy?

4 Immediately 11 Within 10 days 7 Within 20 days
8 Within 30 days 6 More than 30 days 2 Did not respond
9 Unknown

Question #3

Was the employee who responded to your complaint knowledgeable and courteous?

29 Knowledgeable 32 Courteous 3 Neither 6 Unknown

Question #4

Did the Board of Pharmacy communicate the results of the investigation of your complaint to you?

35 Yes 11 No 2 Unknown

1. "Unknown. In the original letter I submitted to the board, although I included some details of my complaint, I was only requesting information as to how to file a complaint. I then received a letter from Investigator, [REDACTED] responding to the complaint which I hadn't yet filed as I was still waiting for information on how best to file the details of the

multiple issues involved. This letter of 30 Dec 2003 states that there was no violation of the “yet-to-be-filed” complaint but ‘regrets and does not condone what occurred’.”

Question #5

Do you think the Board of Pharmacy did everything it could to resolve your complaint?

19 Yes 21 No 8 Unknown

1. “Unknown, no response from board.”
2. “No. They did nothing but say the pharmacist made a mistake.”
3. “Unknown. Not sure, they could have done some more.”
4. “No. All they did was say it wasn’t warranted, even though I was given the wrong medication.”

Question #6

Were you satisfied with your dealings with the Board of Pharmacy?

21 Yes 24 No 3 Unknown

1. “No. The Alabama Board of Pharmacy was not helpful in the slightest and did nothing to respond to my complaint in a knowledgeable or courteous manner. I was having a problem with an Alabama pharmacy () sending me expensive medicine which I had not ordered and forcing me to pay for it. I was told in writing that the Alabama Board of Pharmacy would not look into my complaint at all, nor refer me to another agency for assistance in getting this pharmacy to quit sending me these unordered medicines. I should not have to pay for medicine that showed up at my home when I did not order it!”
2. “Yes. They closed down, so I assume the board closed it down.”
3. “No. Money was never paid regarding this matter.”
4. “Unknown. No response from board.”
5. “No. I showed the examiner the two bottles labeled K-Durr and the receipt where I had paid for K-Durr, although one bottle was Klor-Con which sells for \$7 - \$8 less. Blue Cross reimburses me 80% so they were involved and I reported the incident to them. They were totally unconcerned with a fraud perpetrated on them by a drug store that only cost them 80% of \$7 - \$8 with so many people beating them out of much more. I explained to them that this was the third or fourth time it had happened and they were still disinterested. I explained to my Pharmacy Board examiner that it happened regularly at this drug store and that they get really upset if you want name brand and not a generic. My insurance does not require me to accept a generic and I do not want them. I own drug stock and like to give my business to the companies that research and develop the drugs. I along with

many others, feel even though the drug contains the same thing that the quality control, base, and effect of generics is inferior. My examiner merely explained that all the drug stores push generics as they make more money off them. I explained it was alright to push them, but if they could not furnish me name brand I could go elsewhere. As far as your examiner's resolving the complaint, it was settled by telling me 'they probably just made a mistake.' To which I replied, they do it all the time. And, how can a pharmacist take a 100 bottle of Klor Con and one bottle of K-Durr which are different looking and mislabel them both K-Durr. I can't see anybody being this stupid. The examiner said they were probably setting side by side on the shelf. Perhaps so, if it was a one-time occurrence, but funny that he did not label them both as Klor-Con and beat himself out of \$8 rather than me."

6. "No. Never heard from anyone."
7. "Unknown. Somewhat, not totally."
8. "Unknown. The board seemed very limited in the options. The investigator was sympathetic, but there appeared to be nothing that she could do."
9. "Yes. My intent was to get decent customer service for customers following me. I hope that I accomplished that, as I knew I would no longer be buying from so unorganized a company."
10. "No. Because they didn't even slap the pharmacists' hand."
11. "Yes. Very satisfied."
12. "No. I had a pharmacist tell my doctor I was intoxicated, and still gave me five pills free of 7.5 Lortab. Still I could not get her name. Or a letter stating what my doctor admitted she said. Only that he said she said it, and told this to the person who investigated my complaint. Therefore, leaving this pharmacist to steal someone else's medication, and tell their doctor some more lies."

APPENDICES

Statutory Authority

CHAPTER 23. PHARMACISTS AND PHARMACIES.

REFERENCES

ADMINISTRATIVE CODE

- 18 Ala. Admin. Code 680-X-2-.01 et seq., State Board of Pharmacy; Practice of Pharmacy
18 Ala. Admin. Code 680-X-3-.01 et seq., State Board of Pharmacy; Alabama Uniform Controlled Substances.
15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

ARTICLE 1. GENERAL PROVISIONS.

REFERENCES

CROSS REFERENCES

- As to controlled substances generally, see §§ 20-2-1 et seq.
As to council on health costs, administration and organization, see § 22-2-9.
As to the State Board of Dental Examiners and the Board of Pharmacy having certain duties with regard to the Alabama Impaired Professionals' Committee, see §§ 34-38-1 et seq.

§ 34-23-1. Definitions. [AL ST SEC 34-23-1]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [Annotations](#)

For the purpose of this chapter, the following words and phrases shall have the following meanings:

- (1) Association. The Alabama Pharmacy Association.
- (2) Board or state board. The Alabama State Board of Pharmacy.
- (3) Chemical. Any substance of a medicinal nature, whether simple or compound, obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.
- (4) Dispense. To sell, distribute, administer, leave with, give away, dispose of, deliver, or supply a drug or medicine to the ultimate user or their agent.
- (5) Drugs. All medicinal substances, preparations, and devices recognized by the United States Pharmacopoeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and internal use in the cure, diagnosis, mitigation, treatment, or prevention of disease in man or animal and all substances and preparations other than food intended to affect the structure or any function of the body of man or animal.
- (6) Extern. A candidate for licensure as a pharmacist during the time prior to graduation from an accredited college or pharmacy.
- (7) Hospital. An institution for the care and treatment of the sick and injured, licensed by the Alabama State Board of Health and authorized to be entrusted with the custody of drugs and medicines, the professional use of drugs and medicines being under the direct supervision of a medical practitioner or pharmacist.
- (8) Intern. An individual who is currently licensed by this state to engage in the practice of pharmacy while

under the personal supervision of a pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or a graduate of an approved college of pharmacy who is currently licensed by the State Board of Pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or a qualified applicant awaiting examination for licensure.

(9) Legend drug. Any drug, medicine, chemical, or poison bearing on the label the words, "caution, federal law prohibits dispensing without prescription," or similar wording indicating that such drug, medicine, chemical, or poison may be sold or dispensed only upon the prescription of a licensed medical practitioner.

(10) License. The grant of authority by the State Board of Pharmacy to a person authorizing him or her to engage in the practice of pharmacy in this state.

(11) Manufacturer. A person, except a pharmacy, who prepares, derives, produces, compounds, or packages any drug, medicine, chemical, or poison.

(12) Medical practitioner. Any physician, dentist, or veterinarian, or any other person authorized by law to treat, use, or prescribe medicine and drugs for sick and injured human beings or animals in this state.

(13) Medicine. Any drug or combination of drugs that has the property of curing, diagnosing, preventing, treating, or mitigating diseases or that which may be used for those purposes.

(14) Patent or proprietary medicines. Completely compounded nonprescription packaged drugs, medicines, and nonbulk chemicals which are sold, offered, promoted, or advertised by the manufacturer or primary distributor under a trademark, trade name, or other trade symbol, and the labeling of which conforms to the requirements of the Federal Food, Drug, and Cosmetic Act; provided, that this definition shall not include:

a. Drugs which are only advertised and promoted professionally to licensed physicians, dentists, or veterinarians by manufacturers or primary distributors.

b. A narcotic or drug containing a narcotic.

c. A drug the label of which bears substantially either the statements "caution--federal law prohibits dispensing without prescription" or "warning--may be habit-forming".

d. A drug intended for injection.

(15) Permit. The grant of authority by the State Board of Pharmacy to any person, firm, or corporation authorizing the operation of a pharmacy, wholesale drug distributor, repackager, bottler, manufacturer, or packer of drugs, medicines, chemicals, or poisons for medicinal purposes. Nonresident wholesale drug distributors registered with the appropriate agency, in the state in which they are domiciled, and operating in compliance with Prescription Drug Marketing Act standards, shall be allowed to do business in this state. No permit shall be required of any physician licensed to practice medicine for any act or conduct related to or connected with his or her professional practice.

(16) Person. Any individual, partnership, corporation, association, trust, or other entity.

(17) Pharmacist. Any person licensed by the Alabama State Board of Pharmacy to practice the profession of pharmacy in the State of Alabama and whose license is in good standing.

(18) Pharmacy. A place licensed by the Alabama State Board of Pharmacy in which prescriptions, drugs, medicines, medical devices, chemicals, and poisons are sold, offered for sale, compounded, or dispensed, and shall include all places whose title may imply the sale, offering for sale, compounding, or dispensing of prescriptions, drugs, medicines, chemicals, or poisons.

(19) Poison. Any substance other than agricultural products and pesticides which when applied to, introduced into, or developed within the body in relatively small quantities by its inherent chemical action uniformly produces serious bodily injury, disease, or death.

(20) Preceptor. A person who is duly licensed to practice pharmacy in the state and meets the requirements as established by the State Board of Pharmacy.

(21) Prescription. Any order for drug or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph, closed circuit television, or other means of communication by a legally competent practitioner, licensed by law to prescribe and administer such drugs and medical supplies intended to be filled, compounded, or dispensed by a pharmacist.

(22) Professional degree. A degree in pharmacy requiring a minimum of five academic years.

(23) Repackager. A person who purchases or acquires from a manufacturer or distributor, a drug, medicine, chemical, or poison for the purpose of bottling, labeling, or otherwise repackaging for sale or distribution. This definition shall not apply to a physician licensed to practice medicine who as a part of his or her professional practice dispenses, administers, sells, or otherwise distributes any drug to a patient.

(24) Sale. Barter, exchange, or gift, or offer of barter, exchange, or gift, and shall include each transaction made by any person, whether a principal, proprietor, agent, servant, or employee.

(25) Wholesale drug distributors. A person engaged in the business of distributing drugs and medicines for

resale to pharmacies, hospitals, practitioners, government agencies, or other lawful outlets permitted to sell drugs or medicines. The sale, purchase, or trade of a drug by a retail pharmacy to another retail pharmacy or practitioner, for relief of temporary shortages, is exempt from this definition. Also exempt from this definition shall be (a) intracompany sales, (b) manufacturer and distributor sales representatives who distribute drug samples, (c) charitable organizations distributing to nonprofit affiliates of that organization, (d) certain purchases by hospitals or other health care entities that are members of a group purchasing organization, and (e) the distributors of blood and blood components.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 2; Acts 1991, No. 91-475, p. 860, § 1; Act 98-643, p. 1414, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1991 amendment, effective July 29, 1991, substituted the present heading of subdivision (9) for "Wholesalers" and added the second and third sentences of that subdivision, in subdivision (10) substituted "or packages" for "packages or repackages," added present subdivision (11), redesignated former subdivisions (11) through (24) as present subdivisions (12) through (25), in subdivision (17) substituted "medicinal" for "medical", in subdivision (18) added "a drug or medicine to the ultimate user or their agent," and in subdivision (24) added the language of the first sentence following "pharmacy" and added the second and third sentences.

The 1998 amendment, effective August 1, 1998, in the introductory paragraph substituted "following meanings:" for "respective meanings described by this section:"; renumbered subdivisions (1)-(25) as subdivisions (2), (17), (1), (18), (16), (24), (12), (7,) (25), (11), (23), (5), (9), (13), (19), (3), (21), (4), (6), (8), (20), (14), (10), (15), and (22), respectively; in subdivision (1), as so redesignated, substituted "Alabama Pharmacy Association" for "Alabama Pharmaceutical Association", in subdivision (4), as so redesignated, inserted "administer," in subdivision (7), as so redesignated, deleted "such" following "professional use of", rewrote subdivision (8), as so redesignated, in subdivision (10), as so redesignated, inserted "or her", in subdivision (11), as so redesignated, substituted "A person, except a pharmacy, who prepares," for "Every person, except a pharmacy in this state who prepares," in subdivision (13), as so redesignated, substituted "those purposes" for "such purposes", in subdivision (14), as so redesignated, in paragraph a. substituted "or primary distributors." for "a primary distributor thereof," in paragraph c. substituted a period for "; or"; in subdivision (15), as so redesignated, in the second sentence substituted "Prescription Drug Marketing Act standards" for "PDMA standards" and substituted "to do business in this state" for "to do business in the State of Alabama", and in the third sentence substituted "No permit" for "Provided, however, that no permit"; in subdivision (20), as so redesignated, substituted "is duly licensed to practice pharmacy in the state and meets the requirements as established by the Board of Pharmacy" for "has been duly licensed to practice pharmacy for a minimum of three years, the last year of which must have been in the active practice of pharmacy in this state, and whose employment shall be on a full time basis in a pharmacy approved for intern training", in subdivision (23), as so redesignated, substituted "A person" for "Every person", in subdivision (24), as so redesignated, substituted "Barter, exchange, or gift, or offer of barter, exchange, or gift," for "Barter, exchange or gift, or offer thereof," and in subdivision (25), as so redesignated, substituted "A person engaged" for "Every person in this state engaged"; and made nonsubstantive changes.

Code Commissioner's Notes

In 1998, the Code Commissioner, in subdivision (6) inserted the word "of" for the word "or" to correct a typographical error.

ANNOTATIONS

CASENOTES

Cited in Thagard v. Brock, 282 Ala. 262, 210 So.2d 821 (1968); Alabama State Bd. of Pharmacy v. Peterson, 47 Ala.App. 201, 252 So.2d 319 (Civ.App.1971); State Dep't of Industrial Relations v. Montgomery Baptist Hospital, Inc., 359 So.2d 410 (Ala.Civ.App.1978); Griffin v. Phar-Mor, Inc., 790 F.Supp. 1115 (S.D. Ala.1992).

Annotations

The practice of pharmacy and the management and operation of pharmacies are hereby declared to affect the public health, safety and welfare of the people of Alabama, and thereby subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that only qualified persons compound or dispense prescription drugs and medicines, and that pharmacies be managed in such a manner as to protect the public, and all provisions of this chapter shall be liberally construed to carry out these objects and purposes.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 1.)

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

Where pharmacy negligently or recklessly misrepresented the contents of a medicine bottle they refilled for a customer by indicating on the label of the bottle that the bottle contained micronase instead of maxide, and where, due to the special relationship between pharmacists and their clients, pharmacy was under a duty to disclose to the customer that she received the wrong medicine, pharmacy's failure to disclose that she received the wrong medicine was a fraudulent concealment of the information sufficient to toll the running of the two year statute of limitations until plaintiff discovered, or reasonably should have discovered, the existence of their causes of action. *Griffin v. Phar-Mor, Inc.*, 790 F.Supp. 1115 (S.D.Ala.1992).

Cited in *Thagard v. Brock*, 282 Ala. 262, 210 So.2d 821 (1968).

§ 34-23-3. State drug inspectors. [AL ST SEC 34-23-3]

References

Each state drug inspector employed by the board following the passage of this chapter must furnish satisfactory proof to the board that he is a person of good moral character and that in the judgment of the members of the board he has sufficient knowledge of the laws pertaining to the practice of pharmacy and law enforcement to enable him to carry out his duties as an inspector consistent with the provisions of this chapter. Each state drug inspector employed by the board shall serve an apprenticeship of a minimum of six months working with and under the supervision of the Chief Drug Inspector or other inspector designated by the board. Each such inspector, before entering upon his duties, shall post with the State Board of Pharmacy a bond in the amount of \$2,000.00 conditioned upon the faithful performance of his duties. Each state drug inspector shall have the power to inspect the medicines and drugs or drug products or domestic remedies which are manufactured, packaged, packed, made, sold, offered for sale, exposed for sale or kept for sale in this state, and for this purpose shall have the right to enter and inspect during business hours any pharmacy or any other place in this state where medicines or drugs or drug products or proprietary medicines are manufactured, packaged, packed, made, sold, offered for sale or kept for sale, whether or not licensed by the State Board of Pharmacy. Each state drug inspector shall be subject to the same restrictions as other officers of the law in regard to search and seizure. They shall report to the board all violations of the laws relating to pharmacy and all rules and regulations of the board. As directed by the board, it shall be the duty of the state drug inspectors to issue citations for violations of such laws, rules or regulations or institute criminal proceedings against persons for such violations. When authorized by the board and where there are specific complaints, the state drug inspector shall have the right to inspect all records, shipping tickets or any other document pertaining to the transfer of drugs or drug preparations, from or to hospitals, pharmacists, wholesale establishments and manufacturers, or any other place or establishment where said preparations of drugs are kept or stored. They shall have the authority to inspect all prescription files, prescription record books, poison registers, exempt narcotic registers and any other records pertaining to the filling and filing of prescriptions. It shall be the duty of the state

drug inspector to take possession of all revoked and/or suspended licenses and permits when such licenses and permits are not surrendered voluntarily to the board by the person or pharmacist whose license or permit has been revoked or suspended. Nothing in this chapter shall authorize or require the state drug inspector or state drug inspectors to inspect the offices of doctors of medicine who have duly qualified with the State Board of Medical Examiners.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 7.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics 11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-4. Recognition of schools and colleges of pharmacy. [AL ST SEC 34-23-4]

Current through End of 2003 Organizational, Regular and 1st Special Session.

The Board of Pharmacy shall recognize only those schools and colleges of pharmacy which are accredited by the American Council on Pharmaceutical Education and are members of the American Association of Colleges of Pharmacy.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 8.)

§ 34-23-5. Pharmacists exempt from jury duty. Repealed by Acts 1989, No. 89-235, p. 303, § 6, effective April 6, 1989. [AL ST SEC 34-23-5]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 34-23-6. Bankruptcy sales, auction sales, etc., of drugs and medicines. [AL ST SEC 34-23-6]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


In the event of any sale in bankruptcy, at public auction or any other sale except in the normal course of business, the seller shall give written notice of such sale to the board at least one week prior to the day of sale, and a complete and accurate report must be made in writing to the board by the proposed seller within 10 days after such sale showing the names and addresses of the parties to whom any narcotics, exempt narcotics or dangerous drugs have been sold together with an itemized inventory thereof. This section shall not apply to the bona fide sale of a pharmacy as a business when the board has been notified of such proposed sale.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 30.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-7. Illegal possession of prescription drugs. [AL ST SEC 34-23-7]

Current through End of 2003 Organizational, Regular and 1st Special Session.


[References](#) [Annotations](#)

Any person found in possession of a drug or medicine limited by law to dispensation by a prescription, unless such drug or medicine was lawfully dispensed, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.00 and, in addition thereto, may be imprisoned in the county jail for hard labor for not more than one year. This section shall not apply to a licensed pharmacy, licensed pharmacist, wholesaler, manufacturer or his representative acting within the line and scope of his employment, physician, veterinarian, dentist or nurse acting under the direction of a physician, nor to a common carrier or messenger when transporting such drug or medicine in the same unbroken package in which the drug or medicine was delivered to him for transportation. (Acts 1966, Ex. Sess., No. 205, p. 231, § 31.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  62.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 166, 175.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

In view of a pharmacist's testimony that federal law prohibits the drug Talwin from being dispensed without a prescription, under Alabama law appellant's possession was unlawful. The trial court was not in error when it did not require further proof. *Christian v. State*, 54 Ala.App. 378, 308 So.2d 737 (Ala.Crim.App.1974), certiorari denied 293 Ala. 749, 308 So.2d 740.

§ 34-23-8. Substitution of drugs or brands of drugs. [AL ST SEC 34-23-8]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#) [Annotations](#)

No person shall dispense or cause to be dispensed a different drug or brand of drug in lieu of that ordered or prescribed without the express permission in each case of the person ordering or prescribing such drug, except as provided below:

(1) A licensed pharmacist in this state shall be permitted to select for the brand name drug product prescribed by a licensed physician or other practitioner who is located in this state and authorized by law to write prescriptions, hereinafter referred to as "practitioner," a less expensive pharmaceutically and therapeutically equivalent drug product containing the same active ingredient, or ingredients, and of the same dosage form strength, in all cases where the practitioner expressly authorizes such selection in accordance with subdivision (4) of this section.

(2) A licensed pharmacist located in this state shall be permitted to select for the brand name drug product prescribed by a practitioner who is located in another state or licensing jurisdiction and who is authorized by the laws of that state or jurisdiction to write prescriptions, a less expensive pharmaceutically and therapeutically equivalent drug product containing the same active ingredient or ingredients, and of the same dosage form strength, in all cases where the out-of-state licensed physician or other practitioner does not expressly prohibit a

substitution.

(3) A pharmacist shall record on the prescription form the name and manufacturer or distributor of any drug product dispensed as herein authorized.

(4) Every written prescription issued in this state by a licensed practitioner shall contain two signature lines. Under one signature line shall be printed clearly the words "dispense as written." Under the other signature line shall be printed clearly the words "product selection permitted." The practitioner shall communicate instructions to the pharmacist by signing on the appropriate line. The State Board of Pharmacy shall not promulgate any rule or regulation affecting the subject matter of this subdivision.

An oral prescription from the practitioner shall instruct the pharmacist whether or not a less expensive pharmaceutically and therapeutically equivalent drug product may be dispensed. The pharmacist shall note instructions on the file copy of the prescription and retain the prescription form for the period specified by law.

(5) Unless otherwise indicated by the practitioner, the prescription label on the dispensing container shall indicate the actual drug product dispensed, either the brand name, or if none, the generic name; and the name of the manufacturer or a reasonable abbreviation of the name of the manufacturer.

(6) This shall not be interpreted to exclude the use of a formulary or drug list as adopted and approved by a medical staff in a licensed hospital with drugs provided thereunder by procedures established for use within that licensed hospital.

(7) Any person who violates the provisions of this section shall be punished by a fine of up to \$1,000. (Acts 1966, Ex. Sess., No. 205, p. 231, § 18, Acts 1979, No. 79-429, p. 676, § 1; Act 2002-58, p. 144, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2002 amendment, effective January 31, 2002, in subdivision (1) inserted "who is located in this state and", redesignated subdivisions (2)-(6) as subdivisions (3)-(7) and added subdivision (2).


REFERENCES

ADMINISTRATIVE CODE

12 Ala. Admin. Code 480-5-5-.21, Department of Industrial Relations; Prescribed Medications.

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:


C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

Award of punitive damages in amount of \$190,000 was not excessive against pharmacy that was assessed \$10,000 in compensatory damages for misfilling prescriptions; pharmacy misfilled plaintiff's prescriptions five times and misfilled a total of 14 other prescriptions during 14-month period, 19 to one ratio of damages was not unreasonable, and criminal penalty was so low that there was little basis for comparing it with any meaningful punitive damages award. Wal-Mart Stores, Inc. v. Robbins, 719 So.2d 245 (Ala.Civ.App.1998). Damages  94

Cited in Griffin v. Phar-Mor, Inc., 790 F.Supp. 1115 (S.D.Ala.1992).

§ 34-23-9. Purity of drugs dispensed. [AL ST SEC 34-23-9]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#)


No person shall compound or sell or offer for sale or cause to be compounded, sold or offered for sale any medicine, drug, poison, chemical or pharmaceutical preparation that is adulterated. Any one of the above-named substances shall be deemed to be adulterated if it is sold by a name recognized in the United States Pharmacopoeia or National Formulary and it differs from the standard of strength, quality or purity as determined by the test laid down therein unless the label so clearly states, or if its strength, quality or purity shall fall below the professed standard of strength, quality or purity under which it is sold. The board shall examine into any claimed adulteration by using the services of an analyst or chemist of recognized approved standing. Any person violating the provisions of this section shall be guilty of a misdemeanor.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 17.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-10. Notification by pharmacists of change of employment. [AL ST SEC 34-23-10]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#)


Each pharmacist licensed by the board shall notify the board in writing within 10 days on change of employment. The notice shall contain his name, license number, the name of the pharmacy where formerly employed and the name of the pharmacy where currently employed.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 12.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-11. Physicians, dentists, registered nurses, etc. exempt from chapter. [AL ST SEC 34-23-11]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

(a) Nothing contained in this chapter shall prevent any licensed practitioner of the healing arts from personally compounding, dispensing, administering, or supplying to his or her patient drugs and medicines for their use. This chapter shall not apply to the manufacture or sale at wholesale or retail of patent or proprietary medicines as purchased from a manufacturer or wholesaler, or to the manufacture or sale at wholesale or retail of packaged, bottled, or nonbulk chemicals, medicines, medical and dental supplies, cosmetics, and dietary foods when identified

by and sold under a trademark, trade name, or other trade symbol, privately owned or registered in the United States Patent Office, sold or offered to be sold to the general public, if the article meets the requirements of the Federal Food, Drug, and Cosmetic Act other than prescription legend drugs.

(b) A registered nurse in the employment of the State Health Department or a county health department may, in the provision of health care services, dispense legend drugs as provided in this section under the standing orders or direct supervision of a physician licensed to practice medicine in this state and pursuant to procedures established by the Board of Pharmacy and implemented by a pharmacist licensed to practice pharmacy in this state. The nurse may dispense the legend drugs for the treatment of tuberculosis, sexually transmitted diseases, family planning, hypertension, and other programs if approved by the State Board of Pharmacy. The dispensing of the drugs shall meet all labeling, packaging, recordkeeping, and counseling requirements of a prescription. The Board of Pharmacy shall have the responsibility to inspect the site where the dispensing occurs. The authority granted to a registered nurse pursuant to this subsection shall not apply to controlled substances as defined in Chapter 2 of Title 20. (Acts 1966, Ex. Sess., No. 205, p. 231, § 32; Acts 1997, No. 97-643, p. 1176, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted the subsection (a) designator, inserted "or her", substituted "the" for "such" preceding "article", and made nonsubstantive changes; and added subsection (b).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  13.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 6, 31-38, 40-41.

§ 34-23-12. Injunctions against violations of chapter. [AL ST SEC 34-23-12]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

When it shall appear to the board that any person who is not licensed under the provisions of this chapter is violating any of the provisions of this chapter, the board may in its own name bring an action in the circuit court for an injunction, and said court of this state may enjoin any person from violating the provisions of this chapter regardless of whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 23.)


REFERENCES

CROSS REFERENCES

As to rules of supreme court relative to injunctions, see A.R.C.P. Rule 65.

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  23.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 85-87.

§ 34-23-13. Penalty for practicing pharmacy without a license; compounding or dispensing prescriptions by unauthorized persons; violations of chapter or rules and regulations of board. [AL ST SEC 34-23-13]

Current through End of 2003 Organizational, Regular and 1st Special Session.


[References](#) [Annotations](#)

Any person who shall practice pharmacy in this state without having first obtained from the board a license, or who permits prescriptions to be compounded and/or dispensed by unauthorized persons; or who violates any of the provisions of this chapter; or who willfully violates any published rule or regulation of the board; or who does any act described in this chapter as unlawful, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor and, upon conviction, shall be punished by fine of not more than \$1,000.00 for each offense, to be fixed by the court trying said case, and in addition thereto may be, in the discretion of the court trying said case, sentenced to hard labor for the county for a period not to exceed 12 months.
(Acts 1966, Ex. Sess., No. 205, p. 231, § 10.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  15.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 42-44, 129-131, 133.

ANNOTATIONS

CASENOTES

Cited in Griffin v. Phar-Mor, Inc., 790 F.Supp. 1115 (S.D.Ala.1992).

ARTICLE 2. LICENSES AND PERMITS.

DIVISION 1. GENERAL PROVISIONS.

§ 34-23-30. Pharmacy permits generally. [AL ST SEC 34-23-30]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#)

Every pharmacy, hospital pharmacy, drugstore, pharmacy department, prescription department, prescription laboratory, dispensary, apothecary or any other establishment with a title implying the sale, offering for sale, compounding or dispensing of drugs in this state shall register annually and receive a permit from the Board of Pharmacy. Any person desiring to open, operate, maintain or establish a pharmacy in this state shall apply to the board for a permit at least 30 days prior to the opening of such business. No pharmacy shall open for the transaction of business until it has been registered, inspected and a permit issued by the board. The application for a permit shall be made on a form prescribed and furnished by the board which when properly executed shall indicate the ownership desiring such permit and the names and license numbers of all licensed pharmacists employed as well as the location of such pharmacy and such other information as the board may require. If more than one pharmacy is operated by the same owner, a separate application for registration must be made and a separate permit issued for each such establishment. All permits issued under this section shall expire on December 31 of each calendar year. Every application for a permit for a new pharmacy shall be accompanied by a fee to be determined by the board, but said fee shall not be less than \$50.00 nor more than \$100.00. Every application for a renewal permit shall be


accompanied by a fee to be determined by the board, but said fee shall not be less than \$25.00 nor more than \$50.00. Every application for a permit due to transfer of ownership shall be accompanied by a fee to be determined by the board, but said fee shall not be less than \$25.00 nor more than \$50.00. Each application for the renewal of a permit must be made on or before the last day of February of each year, at which time the previous permit shall become null and void. A penalty of \$25.00 for each overdue month shall be assessed in addition to the permit fee for renewal of delinquent permits. The secretary of the board shall issue a permit for each pharmacy whose application is found to be satisfactory by the board. Permits issued under this section shall not be transferable. Any change in the control of ownership or licensed pharmacists must be reported to the board in writing within 10 days of such occurrence. If the pharmacy is owned by a corporation, the permit shall be issued in the name of the corporation. It shall be the duty of the owners of such pharmacies who are not licensed pharmacists to immediately notify the board upon the termination of employment of licensed pharmacists and to cause the surrender of permits as indicated. The further operation of the pharmacy in the absence of licensed pharmacists is forbidden; provided, that such nonregistered owner shall have a period of 30 days within which to comply with this provision. The next of kin of any deceased licensed pharmacist owner shall have a period of 30 days within which to comply with the provisions of this chapter, during which time no prescriptions shall be filled unless a licensed pharmacist is on duty. No mail order pharmacy shall transact business in this state without a permit from the board.

Any person who violates this section shall be guilty of a misdemeanor.
(Acts 1966, Ex. Sess., No. 205, p. 231, § 14; Acts 1985, No. 85-702, p. 1151, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  12.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 31-38, 40-41, 128.

§ 34-23-31. Permits for mail-order houses. [AL ST SEC 34-23-31]

Current through End of 2003 Organizational, Regular and 1st Special Session.


References

Every mail-order house which dispenses drugs or medicines through the United States mail or otherwise from any point in the State of Alabama to any point outside of the State of Alabama, and every such business which dispenses drugs or medicines through the United States mail or otherwise from any point outside of the State of Alabama to any point within the State of Alabama shall obtain a permit from the State Board of Pharmacy as a condition precedent to being qualified and authorized to transact such business in the State of Alabama.
(Acts 1966, Ex. Sess., No. 205, p. 231, § 29.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  13.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 6, 31-38, 40-41.

§ 34-23-32. Drug manufacturers; wholesale drug distributors. [AL ST SEC 34-23-32]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Every manufacturer, bottler, packer, repackager, or wholesale drug distributor, of drugs, medicines, chemicals or poisons for medicinal purposes in this state shall register annually with the board by application for a permit on a form furnished by the board and accompanied by a fee to be determined by the board, but said fee shall not be less than \$250.00 nor more than \$1,000.00 for a new establishment or a fee to be determined by the board, but said fee shall not be less than \$125.00 nor more than \$500.00 annually for a renewal permit, or a fee to be determined by the board, but said fee shall not be less than \$125.00 nor more than \$500.00 for a permit due to transfer of ownership, and shall employ a full-time licensed pharmacist whose principal duty shall be confined to on-premise pharmaceutical operations. Wholesalers drug distributors, who strictly limit their operation to distribution of drugs, medicines, chemicals or poisons for medicinal purposes are exempt from the requirement to employ a full-time licensed pharmacist. The professional practice of any physician licensed to practice medicine is exempt from the requirements of this section. All permits issued under this section shall expire December 31 of each calendar year. Each application for the renewal of the permit must be made on or before the last day of February of each year, at which time the previous permit shall become null and void. A penalty of \$25.00 for each overdue month shall be assessed in addition to the permit fee for renewal of delinquent permits. For each application for a permit made and found to be satisfactory by the board, the secretary of the board shall issue to the applicant a permit for such manufacturing or wholesale establishment, which permit shall be displayed in a conspicuous place. All such companies in this state must, before shipping any drug bearing the legend, "caution, federal law prohibits dispensing without prescription" or similar wording causing these drugs to be known as legend drugs to new customers, assure themselves that the recipient is either a duly licensed doctor of medicine, dentistry, veterinary medicine or holds a registered pharmacy permit from the board by contacting the office of the board. No such company shall ship any legend drug to any person or firm after receiving written notice from the board that such person or firm no longer holds a registered pharmacy permit. Any person violating the provision of this section shall be guilty of a misdemeanor.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 24; Acts 1985, No. 85-702, p. 1151, § 1; Acts 1991, No. 91-475, p.860, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1991 amendment, effective July 29, 1991, in the first sentence, substituted the present language preceding "medicines" for "Every manufacturer, bottler or packer of drugs," substituted "\$250.00" for "\$50.00," substituted "\$1,000.00" for "\$100.00," substituted "\$125.00" for "\$25.00", and substituted "\$500.00" for "\$50.00;" added the second and third sentences; substituted "manufacturing or wholesale establishment, which shall" for "manufacturing establishment, which permit shall" in the seventh sentence; in the eighth sentence, substituted "such companies" for "drug-manufacturing companies" and deleted "dentistry" following "medicine" and substituted "such companies" for "drug-manufacturing companies" in the ninth sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  12.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 31-38, 40-41, 128.

§ 34-23-32.1. FDA requirements to be adhered to by affected parties. [AL ST SEC 34-23-32.1]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Any requirements established by the FDA Guidelines, as required by the Federal Prescription Drug Marketing Act of 1987 (PDMA), specifically addressed in Sections 34-23-1 and 34-23-32, shall be adhered to by the affected parties.

(Acts 1991, No. 91-475, p. 860, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective July 29, 1991.

REFERENCES

FEDERAL ASPECTS

The Federal Prescription Drug Marketing Act of 1987 (PDMA), referred to in this section, is codified at 21 U.S.C.A. § 333 et seq.

§ 34-23-33. Revocation or suspension of licensed pharmacist, holder of pharmacy intern or extern certificate, permit to operate -- Grounds. [AL ST SEC 34-23-33]

Current through End of 2003 Organizational, Regular and 1st Special Session.

The board may revoke, suspend, place on probation, or require remediation for any licensed pharmacist or a holder of a pharmacy intern or extern certificate for a specified time as determined by the board and take the same or similar action against the permit to operate any pharmacy in this state, whenever the board finds by a preponderance of the evidence, or pursuant to a consent decree, that the pharmacist has been guilty of any of the following acts or offenses:

- (1) Obtaining the license to practice pharmacy or the permit to operate a pharmacy by fraudulent means.
- (2) Violation of the laws regulating the sale or dispensing of narcotics, exempt narcotics or drugs bearing the label "caution, federal law prohibits dispensing without prescription," or similar wording which causes the drugs to be classified as prescription legend drugs.
- (3) Conviction of a felony. A copy of the record of the conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.
- (4) Conviction of any crime or offense that reflects the inability of the practitioner to practice pharmacy with due regard for the health and safety of the patients.
- (5) Inability to practice pharmacy with reasonable skill and safety to patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals or any other substance, or as a result of any mental or physical condition.

When the issue is whether or not a pharmacist is physically or mentally capable of practicing pharmacy with reasonable skill and safety to patients, then, upon a showing of probable cause to the board that the pharmacist is not capable of practicing pharmacy with reasonable skill and safety to patients, the board may require the pharmacist in question to submit to a psychological examination by a psychologist to determine psychological status or a physical examination by a physician, or both, to determine physical condition. The psychologist or physician, or both, shall be designated by the board. The expense of the examination shall be borne by the board. Where the pharmacist raises the issue of mental or physical competence or appeals a decision regarding his or her mental or physical competence, the pharmacist shall be permitted to obtain his or her own evaluation at the pharmacist's expense. If the objectivity or adequacy of the examination is suspect, the board may complete the examination by the designated practitioners at its own expense. When mental or physical capacity to practice is at issue, every pharmacist licensed to practice pharmacy in the state shall be deemed to have given consent to submit to a mental or physical examination or to any combination of the examinations and to waive all objections to the admissibility of the

examination, or to previously adjudicated evidence of mental incompetence.

(6) Gross malpractice or repeated malpractice or gross negligence in the practice of pharmacy.

(7) Violation of any provisions contained in this chapter.

(8) Employing, assisting or enabling in any manner any unlicensed person to practice pharmacy.

(9) The suspension, revocation, or probation by another state of a license to practice pharmacy. A certified copy of the record of suspension, revocation, or probation of the state making such a suspension, revocation, or probation shall be conclusive evidence of the suspension, revocation, or probation.

(10) Refusal to appear before the board after having been ordered to do so in writing by the executive officer or chair of the board.

(11) Making any fraudulent or untrue statement to the board.

(12) Violation of any rule or regulation of the board.

(13) Violation of the code of professional conduct adopted by the board in the rules and regulations of the board.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 20; Acts 1989, No. 89-235, p. 303, § 3; Acts 1990, No. 90-550, p. 856, § 1; Acts 1995, No. 95-585, p. 1243, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 19, 1990, deleted "or" at the end of subdivisions (11), added subdivision (12), and redesignated former subdivision (12) as subdivision (13).

The 1995 amendment, effective July 31, 1995, in the introductory language, substituted "The board may" for "The board shall have the power and duty to," inserted "or a holder of a pharmacy intern or extern certificate," substituted "time as determined by the board" for "time to be determined at the discretion of the board," deleted "to" preceding "take," and substituted "the board finds" for "the board shall find"; in subdivision (3), deleted "to" preceding "by the clerk" and added "of the conviction"; substituted "shall be designated" for "is to be designated" in the second sentence of the second paragraph of subdivision (5); in subdivision (9), deleted "or" preceding "revocation" in three places, inserted "or probation" in three places, and added "of the suspension, revocation, or probation"; and made nonsubstantive changes.


Code Commissioner's Notes

In 1995, a reference in subdivision (7) to "Title 34, Chapter 23" was changed to "this chapter" for clarity.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  15.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 42-44, 129-131, 133.

§ 34-23-34. Revocation or suspension of licenses to practice pharmacy and pharmacy permits -- Statement of charges and notice of hearing. [AL ST SEC 34-23-34]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

No action to revoke or suspend the license of any pharmacist or the permit to operate any pharmacy in this state shall be taken until the licensee or holder of such permit has been furnished a statement in writing of the charges against him together with a notice of the time and place of hearing. The statement of charges and notice shall be served upon such a person at least 30 days before the date fixed for said hearing, either personally or by registered or certified mail sent to his last known post-office address. The burden of proof shall be on the board.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 21.)


REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  15.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 42-44, 129-131, 133.

DIVISION 2. PHARMACISTS' LICENSES.

§ 34-23-50. Required. [AL ST SEC 34-23-50]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)

It shall be unlawful for any person, firm or corporation to practice pharmacy in this state or to permit prescriptions to be compounded and/or dispensed by persons other than those duly licensed by the board to practice pharmacy in this state; provided, that any person who holds a professional degree in pharmacy from a school of pharmacy recognized by the board who is serving his internship under the immediate direct supervision of a pharmacist on the premises registered by the board and any person who is enrolled in a school of pharmacy recognized by the board working under the immediate and direct supervision of a pharmacist on the premises registered by the board pursuing his education as a pharmacist shall be permitted to compound and/or dispense prescriptions. In order to be considered enrolled in a school of pharmacy and pursuing his education as a pharmacist, a person shall not be absent from said school of pharmacy for more than two consecutive semesters or three consecutive quarters, dependent upon the system in use in said school of pharmacy. Any bona fide resident of this state who shall furnish proof to the board in person by affidavits from two pharmacists licensed by the State Board of Pharmacy, neither of whom shall be related to the applicant by blood or marriage, within a period of 90 days subsequent to August 26, 1966, establishing the fact that he has filled prescriptions under the supervision of a licensed pharmacist over a period of at least 15 successive years next preceding the offer of such proof shall be issued an assistant's certificate which will authorize him to practice pharmacy in this state; provided, that he shall be under the supervision of a licensed pharmacist at all times, and such person shall be subject to all of the provisions of this chapter governing the practice of pharmacy in this state, including, but not limited to, the revocation or suspension of such certificate for violations of the provisions of this chapter; and provided further, that such person shall pay an original registration fee to be determined by the board, but said fee shall not be less than \$25.00 nor more than \$50.00 upon the issuance of such certificate and the annual renewal fee to be determined by the board, but said fee shall not be less than \$10.00 nor more than \$50.00 as provided in this chapter. As used in the preceding sentence, the term "supervision" shall be construed to mean that the supervising licensed pharmacist shall be either personally present or on call and available for consultation at all times, or a licensed pharmacist designated by the supervising licensed pharmacist shall be either personally present or on call and available for consultation at all times.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 9; Acts 1985, No. 85-702, p. 1151, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  13.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 6, 31-38, 40-41.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Appeal and review 7 enter p
Grant or denial of license 6 enter p
"Licensed pharmacist" 4 enter p
Nature of board's functions 3 enter p
Purpose 2 enter p
Qualifications for licensure 5 enter p

1. Generally

The Legislature considered that persons who had been filling prescriptions for a long period of time, although possibly lacking the educational and other requisites required of licensed pharmacists, should nevertheless be licensed assistant pharmacists. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

2. Purpose

Object of section is to regulate the practice of pharmacy so as to protect the health of the people of this state. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

3. Nature of board's functions

Since the board is required to apply the statutory requirements to the facts contained in each application, and then to decide whether to license, this procedure has greater overtones of the adjudicatory process than of the legislative process. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Denial of license is in nature of quasi-judicial act. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

4. "Licensed pharmacist"

"Licensed pharmacist" means a pharmacist licensed in Alabama. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

5. Qualifications for licensure

The Legislature, in prescribing a lengthy period of apprenticeship for persons seeking to be licensed as assistant pharmacists, without also specifying in more detail the terms of that apprenticeship, purposely did so in order to give the administrative agency more leeway in assessing each applicant's qualifications for licensure. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Absent any more specific requirements by the board, the criteria for assessing the work periods of an applicant would be one of reasonableness. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

6. Grant or denial of license

Evidence showing that the applicant worked 25 to 50 hours per week filling prescriptions during the periods in question is a reasonable satisfaction of the requirements of this section. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Where three of the 15 successive years required of an applicant to have been served in the employ of a licensed

pharmacist were spent in the employ of a pharmacist licensed in Georgia, the applicant is not entitled to be licensed as an assistant pharmacist in the State of Alabama. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

7. Appeal and review

The decision of the board to deny licensure may be reviewed only by the method prescribed by § 34-23-94. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Cited in *Griffin v. Phar-Mor, Inc.*, 790 F.Supp. 1115 (S.D.Ala.1992).

§ 34-23-51. Application for license; qualifications of applicants; examination of applicants; license by reciprocity. [AL ST SEC 34-23-51]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#) [Annotations](#)

Every person who desires to practice pharmacy within this state shall file with the secretary of the board his or her written application for licensure upon forms furnished by the board not less than 10 days prior to his or her examination. The application shall be accompanied by an examination and registration fee for residents and nonresidents of this state, the fees to be set by the board. The application shall be accompanied by two recent photographs of the applicant, no larger than 2 1/2 x 3 1/4 inches and certified on the back of each photograph by a notary public. The applicant shall furnish satisfactory proof that he or she is at least 19 years of age, of good moral character, and that he or she holds a professional degree from a division, school, college, or a university department of pharmacy recognized by the State Board of Pharmacy. The applicant shall have completed an approved practical training program under the supervision of a licensed pharmacist in a site recognized by the board as qualified for training pharmacy externs and interns, the training standards to be established by the board as long as the standards are not less than those set by the National Association of Boards of Pharmacy. The completion of the practical training requirements shall be attested by affidavit from the licensed pharmacist preceptor under whom the training is served. The applicant shall pass an examination administered by the board in subjects consistent with those required by the National Association of Boards of Pharmacy and in accordance with the rules and regulations of the board. In case of failure of a first examination, the applicant shall have within three years the privilege of a second and third examination. In case of failure in the third examination, the applicant shall be eligible for only one additional examination and this only after he or she has satisfactorily completed additional preparation as directed and approved by the board. An applicant may be admitted to the examination provided all of the foregoing requirements are met, and in addition, that affidavits attesting to the prescribed practical training program have been presented to the secretary prior to the examination. An application for examination by the board may be denied if the applicant is proven to have been involved in any violation of this chapter. An applicant who has been expelled from an examination for cribbing, cheating, or other dishonest conduct shall not be permitted to complete the examination applied for and shall not be permitted to file a new application for examination during the balance of the same calendar year or the calendar year next following the expulsion. The board may issue a license without examination to an applicant who furnishes satisfactory proof that he or she has been licensed to practice pharmacy by examination in another state that under like conditions grants reciprocal licensure without examination to pharmacists duly licensed by examination in this state, that he or she is a person of good moral character and temperate habits, and provided that the requirements in the state from which the applicant is reciprocating were no less than the requirements of the National Association of Boards of Pharmacy. The application shall be accompanied by a fee set by the board. Each applicant for licensure by reciprocity shall be personally interviewed by two or more members of the board before being granted a license, and the applicant shall pass a written examination on the laws governing the practice of pharmacy in this state. The applicant shall be approved for reciprocity by the board prior to the time that he or she begins the duties of a licensed pharmacist in this state. No applicant shall be granted reciprocal licensure unless all evidence and supporting documents of licensure in the state from which the applicant is reciprocating are approved as meeting the requirements for reciprocity of the National Association of Boards of Pharmacy. The board shall set and collect a fee for submitting and certifying grades for reciprocity in other states.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 11; Acts 1975, 3rd Ex. Sess., No. 147, p. 393; Acts 1989, No. 89-235, p. 303, § 3; Act 98-643, p. 1414, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1998 amendment, effective August 1, 1998, in the first sentence substituted "his or her written application" for "his written application", in the second sentence substituted "shall be accompanied" for "must be accompanied", and substituted "the fees to be set by the board." for "said fees to be set by the board, not to exceed \$15.00 plus the actual cost of the examination." in the fourth sentence substituted "shall furnish satisfactory proof that he or she is at least 19 years of age, of good moral character, and that he or she holds a professional degree" for "must furnish satisfactory proof that he is 19 years of age, of good moral character and that he holds a professional degree", in the fifth sentence substituted "shall have completed" for "must have completed", substituted "site recognized by the board" for "pharmacy recognized by the board", and substituted "the training standards" for "such training standards", in the sixth sentence substituted "shall be attested" for "must be attested", and substituted "licensed pharmacist preceptor under" for "supervising licensed pharmacist under", in the seventh sentence substituted "shall pass an examination" for "must pass an examination", in the eighth sentence substituted "three years the privilege" for "three years privilege", in the ninth sentence substituted "he or she has satisfactorily" for "he has satisfactorily", in the twelfth sentence substituted "An applicant" for "Any applicant" and substituted "the expulsion" for "such expulsion", in the thirteenth sentence substituted "he or she has been licensed" for "he has been licensed" and substituted "he or she is a person of good moral character" for "he is a person of good moral character", in the fourteenth sentence substituted "shall be accompanied" for "must be accompanied", in the fifteenth sentence substituted "the applicant shall pass" for "such applicant must pass", and in the sixteenth sentence substituted "he or she begins the duties" for "he begins the duties"; and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  12.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 31-38, 40-41, 128.

ANNOTATIONS

CASENOTES

Cited in *Griffin v. Phar-Mor, Inc.*, 790 F.Supp. 1115 (S.D.Ala.1992).

§ 34-23-52. Expiration; renewal. [AL ST SEC 34-23-52]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


All certificates of licensure shall expire on December 31 following the date of issue. Every licensed pharmacist in order to continue to be licensed shall pay an annual renewal fee to be determined by the board, but said fee shall not be less than \$10.00 nor more than \$50.00 to the secretary of the board, such fee being due on January 1 each year and delinquent after the last day of February of each year; except, that holders of life certificates to practice pharmacy previously issued shall not be required to pay the annual renewal fee. The payment of the renewal fee shall entitle the registrants to renewal of their certificates at the discretion of the board. If any pharmacist shall fail to pay a renewal fee on or before the last day of February of any year, such certificate shall become null and void, and the holder of such certificate may be reinstated as a licensed pharmacist only upon payment of a penalty of \$10.00 for each lapsed year and all lapsed fees for each lapsed year, provided the lapsed time of registration shall not exceed five years, in which case reinstatement may be had only upon satisfactory examination by the board.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 13; Acts 1985, No. 85-702, p. 1151, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  12.1.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 31-38, 40-41, 128.

§ 34-23-53. Training program for candidates for licensure. [AL ST SEC 34-23-53]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

Candidates for licensure as pharmacists shall complete a practical training program as prescribed by the board in keeping with standards established by the national accreditation agencies. The candidate shall apply to the board for proper reporting forms and shall ascertain that the preceptor under whom he or she proposes to take his or her practical training is a qualified preceptor. The candidate shall receive credit for experience gained only in an approved site under the supervision of an approved preceptor. The candidate must keep records as prescribed by the board of all professional experience gained, and upon request, must report to the board and furnish information relative to the practical experience gained. The board may accept internship affidavits from other states, provided the internship requirements are no less than requirements of the National Association of Boards of Pharmacy. (Acts 1966, Ex. Sess., No. 205, p. 231, § 27; Acts 1975, 3rd Ex. Sess., No. 147, p. 393; Act 98-643, p. 1414, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1998 amendment, effective August 1, 1998, in the second sentence substituted "he or she proposes to take his or her practical training" for "he proposes to take his practical training", in the third sentence substituted "approved site under the supervision" for "approved pharmacy under the supervision", and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  14.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 30, 40-41, 129-130, 133.

ARTICLE 3. PHARMACIES.

§ 34-23-70. Management; display of permit and license; poisons; prescriptions generally; physicians not restricted by chapter. [AL ST SEC 34-23-70]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

(a) Every pharmacy when opened for business shall be under the personal supervision of a duly licensed pharmacist who shall have personal supervision of not more than one pharmacy at the same time. During temporary absences of the licensed pharmacist, not to exceed three hours daily or more than one and one-half hours at any one time, nor more than one week for temporary illness, the prescription department shall be closed, and no prescriptions are to be filled. During the temporary absence of a pharmacist, a sign shall be placed on the prescription counter in a prominent location easily seen by the public stating, "Prescription Department Closed, No Pharmacist on Duty."

(b) The permit issued to each pharmacist by the board and the licensure certificates issued to the licensed pharmacist employed by each pharmacy must be prominently and conspicuously displayed in the pharmacy. The name of the licensed pharmacist on duty must be conspicuously displayed in the prescription department in a place readily observable by the public.

(c) No licensed pharmacist or pharmacy operating within this state shall accept for refund purposes or otherwise any unused portion of any dispensed prescription.

(d) The sale of poisons is restricted to the immediate supervision of a licensed pharmacist, and such poison shall not be displayed in a pharmacy in such a manner that a customer may obtain possession of such poisons when standing in an area allocated for customer use. No sale of a poison shall be made or delivered to any minor under 12 years of age or to any person known to be of unsound mind or under the influence of alcohol.

(e) No pharmacy shall authorize any person, firm or business establishment to serve as a pick-up station or intermediary for the purpose of having prescriptions filled or delivered, whether for profit or gratuitously.

(f) No prescription blank supplied by a pharmacy or pharmacist to a practitioner shall bear the imprint thereon of the name or address of any pharmacy or bear the name or address of any person registered under this chapter.

(g) No person shall fill or compound a prescription or drug order in an institution unless he is a duly licensed pharmacist or otherwise permitted to do so under the provisions of this chapter. The act of filling or compounding prescriptions or drug orders in an institution shall be as defined in the rules and regulations adopted by the Board of Pharmacy.

However, such rules and regulations shall not apply to the reading, interpreting and writing or verifying the writing of adequate directions as are necessary to assure patient's understanding of the prescriber's intentions by a duly qualified nurse practicing her/his profession in a licensed hospital or similar institution.

Nothing in this chapter shall authorize the Board of Pharmacy to promulgate or to enforce any rule or regulation which governs, regulates or restricts the professional practice of a physician licensed to practice medicine in this state. No provision of this chapter, or any rule promulgated under the authority of this chapter shall be interpreted to amend, alter or modify the provisions of Section 34-23-11.

(h) Only a licensed pharmacist or registered intern may accept an oral prescription of any nature. Upon so accepting such oral prescription, it must immediately be reduced to writing, and only a licensed pharmacist or an intern supervised by a licensed pharmacist may prepare a copy of a prescription or read a prescription to any person for purposes of providing reference concerning treatment of the person or animal for whom the prescription was written; and, when said copy is given, a notation shall be made upon the prescription that a copy has been given, the date given and to whom given.

(i) If a prescription is refilled, a record of the date upon which the prescription is refilled must appear on the prescription or in a permanent prescription record book. On prescriptions which may be refilled, written or oral authorization must be received before refilling unless the number of refills is indicated on the original prescription. Those prescriptions marked "refill prn" or equivalent designation shall be refilled only in quantities commensurate with the dosage scheduled.

(j) Each prescription must be written in a manner so that it can be compounded by any registered pharmacist. The coding of any prescription is in violation of this chapter. No prescription shall be written in any characters, figures or ciphers, other than in the English or Latin language, generally in use among medical and pharmaceutical practitioners.

(k) A prescription file or files shall be kept by every pharmacy for a period of not less than two years in which the original of every prescription compounded or dispensed shall be filed in the order of compounding with number and date of dispensing placed on each prescription. Each pharmacy shall produce any prescription file whenever legally required to do so. Such prescription file shall at all times be open for inspection by the prescriber, the Board of Pharmacy or its inspectors.

(l) All drugs or drug preparations bearing upon the package the words, "caution, federal law prohibits dispensing without prescription" or words to the same effect, otherwise known as "legend drugs," shall be stored within the confines of the prescription department or the prescription department storage room of each pharmacy.


Such drugs shall be sold or dispensed only on the prescription of a licensed practitioner authorized to prescribe such drugs and shall not be sold or dispensed as a refilled prescription except upon the express authorization of the prescriber. This shall not be construed to prohibit return to authorized suppliers or sale or transfer to others licensed to possess legend drugs.

(m) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. (Acts 1966, Ex. Sess., No. 205, p. 231, § 15; Acts 1989, No. 89-747, p. 1513, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-71. Requirements for prescription rooms. [AL ST SEC 34-23-71]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


Any new pharmacy or any existing pharmacy which is to be remodeled or which is to be moved to a new location other than a hospital pharmacy must comply with the following requirements for the prescription room area: That portion or part of the entire licensed pharmacy which is to be occupied by the prescription compounding or dispensing department, including that portion or part thereof utilized for the sale of restricted drugs, shall be not less than 240 square feet. The surface of the prescription compounding counter shall be not less than 24 inches in width and not less than 16 square feet of unobstructed working space for one pharmacist and not less than 24 square feet of total working space where two or more pharmacists are to be on duty at any one time. The aisle space or floor area to be occupied by a dispensing pharmacist shall extend the full length of the prescription compounding counter, and it shall be clear and unobstructed for a minimum distance of 36 inches from the working side of the prescription compounding counter.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 16.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-72. Internship training sites. [AL ST SEC 34-23-72]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes References

Every site approved by the State Board of Pharmacy for intern training shall be managed so that the intern is provided with ample opportunity to meet the training requirements established by the board. The site must have in its employ, or have an arrangement with, a pharmacist who is registered as a preceptor. A site which meets these qualifications may be approved for internship training by the board.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 25; Act 98-643, p. 1414, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:


The 1998 amendment, effective August 1, 1998, rewrote the section which read:

"Every pharmacy approved by the board for intern training must be managed so that the emphasis is on activities connected with the distribution of articles and services pertaining to medical care, including drugs, medicines, prescriptions, medical supplies and materials. Such pharmacy must compound or dispense a sufficient number of prescriptions, including renewals, so as to provide the pharmacist candidate with ample opportunity to scrutinize at least 2500 prescriptions during the course of any three month training period, and compound or dispense under the supervision of a registered pharmacist not less than 1,000 prescriptions. Such pharmacy must have in its employ a registered pharmacist who is registered as a preceptor. Any pharmacy which meets the hereinabove qualifications shall be approved the board for internship training."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-73. Preceptor qualifications. [AL ST SEC 34-23-73]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

Every pharmacist serving as a preceptor shall have expressed a willingness to serve as a preceptor. Pharmacist preceptors shall be approved by the board and shall be willing to cooperate with the board in developing the necessary training requirements and shall provide appropriate documentation to the board. Each preceptor shall certify as to the commencement and completion of the training period and may make recommendations to the board concerning the competency of his or her trainee. The preceptor shall report to the board from time to time as requested on the progress of any intern or extern under his or her supervision. It shall be his or her responsibility in a supervisory capacity to see that each intern or extern receives proper training under the objectives of the board for this practical training program.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 26; Act 98-643, p. 1414, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1998 amendment, effective August 1, 1998, formed the first sentence from the former first to the third sentences by deleting "preceptor must have been a licensed pharmacist for a minimum of three years and have been actively engaged in the practice of pharmacy over the year next preceding the date of his approval by the board. His employment must be on a full-time basis in a pharmacy approved by the board for intern training. He must be willing to cooperate with the board in developing the practical experience requirements and must make application signifying his desire to do so", inserted the second sentence, in the third sentence substituted "certify as to the commencement" for "certify to the commencement", substituted "his or her trainee" for "his trainee", in the fourth sentence substituted "preceptor shall report" for "preceptor must report" and substituted "his or her supervision" for "his supervision", in the fifth sentence substituted "his or her responsibility" for "his responsibility", and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-74. Hospitals and related institutions. [AL ST SEC 34-23-74]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

Every pharmacy located in a hospital, skilled nursing home, or other related institution in this state shall be under the supervision of a licensed pharmacist. In general hospitals, skilled nursing homes, and extended care facilities not operating a pharmacy, the drug or medicine room shall be under the direct supervision and direction of a consulting pharmacist or a member of the medical staff who shall be a licensed practitioner of medicine. In nursing homes which are not classified by the State Board of Health as skilled nursing homes, maternity homes, homes for the aged, domiciliary institutions, and all related institutions except those operated by and in conjunction with a licensed hospital, medicines or drugs bearing the wording on the label "caution, federal law prohibits dispensing without prescription" or similar wording that causes the medicines or drugs to be known as prescription legend drugs shall be furnished by a licensed pharmacy on the prescription of a licensed practitioner of medicine for individual patients, and there shall be no prescription legend drugs on the premises of these institutions other than those so prescribed except an emergency kit as authorized by the State Board of Health. In hospitals and skilled nursing homes using vending machines or mechanical devices for the storage and dispensing of drugs, the machines or devices shall be stocked only under the supervision of a licensed pharmacist, and the drugs may be dispensed from the machine or device only by an individual acting in accordance with established institutional hospital pharmacy policy. The State Board of Pharmacy may at any time adopt such additional rules and regulations consistent with this chapter as may be deemed necessary after advising with the Alabama Society of Hospital Pharmacists in regard to the storage and handling of drugs and medicines and the disposition of unused portion of drugs and medicines in hospitals and other related institutions under this section.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 28; Acts 1995, No. 95-398, p. 819, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1995 amendment, effective July 25, 1995, inserted "which are" in the third sentence; in the next-to-last sentence, substituted "under the supervision of" for "by" and substituted "an individual acting in accordance with established institutional hospital pharmacy policy" for language relating to nurses and pharmacists; deleted "the provisions of" following "regulations consistent with" in the last sentence; and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

§ 34-23-75. Emergency prescription refill. [AL ST SEC 34-23-75]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

In the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication, providing that:

- (1) The prescription is not a medicinal agent listed in Schedule II appearing in Title 20, Chapter 2.
 - (2) The medication is essential to the maintenance of life or the continuation of therapy in a chronic condition. Only those drugs designated by a joint rule adopted by the Board of Pharmacy and Board of Medical Examiners shall be refilled, according to the procedure established in this section.
 - (3) The dispensing pharmacist creates a written order containing all of the prescription information required by this chapter and Title 20, Chapter 2.
 - (4) The dispensing pharmacist notifies the prescriber of the emergency dispensing within 72 hours after such dispensing.
- (Acts 1991, No. 91-554, p. 1023, § 1.)

HISTORICAL NOTES

HISTORY


Effective date:

The act which added this section became effective July 29, 1991.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ARTICLE 4. BOARD OF PHARMACY.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 680-X-1-.01, State Board of Pharmacy; Administration: Organization.

§ 34-23-90. Composition; qualifications of members; appointment; election; vacancies; term of office; removal of members; oath of office; election of officers. [AL ST SEC 34-23-90]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

(a) The Alabama State Board of Pharmacy is vested with the authority to carry out the purposes of and enforce this chapter. The board shall consist of five members. The members of the board shall be licensed pharmacists who have been licensed in this state for a minimum of five years and who are actively engaged in the practice of pharmacy or pharmacy administration, or both.

(b) Three members shall be appointed by the Governor. Of the three appointed members, one member shall be engaged in the practice of pharmacy, or pharmacy administration, or both, in a hospital, one in an independent pharmacy, and one in a chain pharmacy. On or before August 1, 1996, and each five years thereafter, or whenever a vacancy occurs in the designated position for hospital pharmacists, the Alabama Society of Health System Pharmacists, or its successor organization, shall submit a list of three nominees to the Governor. On or before August 1, 1994, and each five years thereafter, or whenever a vacancy occurs in the designated position for a chain pharmacist, the Alabama Pharmacy Association, or its successor organization, shall submit a list of three nominees to the Governor. On or before August 1, 1997, and each five years thereafter, or whenever a vacancy occurs in the designated position for the independent pharmacist, the independent pharmacist members of the Alabama Pharmacy Association, or its successor organization, shall submit a list of three nominees to the Governor. From the names submitted to the Governor, the Governor shall appoint a replacement on or before December 31 of the same year the nominations are received, for the member or members whose term or terms are expiring. Background information shall be provided for each nominee for an appointed position.

(c) On or before December 1, 1995, and each five years thereafter, and on or before December 1, 1998, and each five years thereafter, or whenever a vacancy occurs in a nondesignated position, the Board of Trustees of the Alabama Pharmacy Association, or its successor organization, shall select a committee of five pharmacists who are members of the association to serve as a nominating committee. No one on the committee shall be a candidate. The committee shall receive names of pharmacists actively engaged in pharmacy practice or administration, or both, from companies and individuals, and shall narrow the list of nominees to two names to be placed on a ballot to be voted on by all Alabama pharmacists. The election procedure for a nondesignated slot shall be as follows: Each candidate shall provide a biographical sketch of not more than 150 words, which shall include his or her most recent practice experience. The board shall mail election ballots and a biographical sketch of the candidates to Alabama licensed pharmacists by September 1. Completed ballots returned to the board postmarked by October 1 shall be tabulated. A pharmacist receiving a majority of the ballots received shall be considered the winner. If a runoff election is necessary, the runoff ballots shall be mailed to licensed pharmacists by November 1 and returned postmarked by December 1. A canvassing committee consisting of a representative from the Alabama Pharmacy Association, or its successor organization, Alabama Society of Health System Pharmacists, or its successor organization, Auburn University School of Pharmacy, and Samford University School of Pharmacy shall tabulate the ballots.

(d) Any vacancies occurring on the board other than by expiration of term shall be filled by election or appointment only for the unexpired term and shall be filled by the same procedure that the replaced member was elected or appointed. Each member of the board shall serve a term of five years beginning on January 1 following appointment and terminating on December 31 of his or her fifth year as a member of the board.

(e) No pharmacist shall serve two full terms consecutively.

(f) The Governor, upon recommendation of the board, may remove a member of the board upon proven charges of inefficiency, incompetency, immorality, or professional misconduct. The replacement member shall be elected or appointed by the same procedure that the removed member was elected or appointed. Appointees to the board shall within 30 days after their appointment or election take an oath or make affirmation before a properly qualified officer that they will faithfully and impartially perform the duties of their office. This oath or affirmation shall be filed with the Secretary of State. At its last regular meeting in each calendar year, the board shall organize by electing for a term of one year, effective the following January 1, a president, a vice-president, and a treasurer who shall be members of the board. No member shall serve more than two years in the same office on the board during a five-year term. The board shall also elect a secretary who shall not serve as a member of the board and the board shall have the authority to fix the amount of the secretary's remuneration. If a board member is selected as secretary, the board member shall resign from the board and a replacement on the board shall be selected by the same procedure by which the resigned member was originally elected or appointed. The secretary shall not be employed during the service by any registrant of the board.

(g) For the purpose of this section, a chain pharmacy shall be defined as any retail pharmacy employing in Alabama a minimum of 40 full-time equivalent pharmacists. A chain pharmacist is defined as a pharmacist employed on a full-time basis by a chain pharmacy for a minimum of three years.

(h) It is the intent of the Legislature that the composition of the board reflect the demographics of the pharmacy profession.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 3; Acts 1981, No. 81-810, p. 1448; Acts 1989, No. 89-235, p. 303, § 3; Acts 1993, No. 93-671, p. 1209, § 3; Act 2001-247, p. 293, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993 amendment, effective May 17, 1993, rewrote this section.

The 2001 amendment, effective April 19, 2001, in subsection (a) substituted "five years" for "5 years"; in subsections (b) and (c) substituted "Health System" for "Hospital", substituted "Pharmacy" for "Pharmacists" in two places each, and inserted "or its successor organization" in three places each; and in subsection (b) substituted "term or terms are" for "term is".

Code Commissioner's Notes

Section 2 of Acts 1989, No. 89-235 provides: "The existence and functioning of the Board of Pharmacy, created and functioning pursuant to sections 34-23-1 through 34-23-118, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved, except section 34-23-5 which is expressly repealed."

Acts 1993, No. 93-671, § 2, provides: "The existence and functioning of the Alabama State Board of Pharmacy, created and functioning pursuant to Sections 34-23-90 to 34-23-118, inclusive, is continued, and those code sections are expressly preserved."


Acts 1997, No. 97-167, § 2, provides: "The existence and functioning of the Alabama State Board of Pharmacy, created and functioning pursuant to Sections 34-23-1 to 34-23-132, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2001-247, § 2 provides: "The existence and functioning of the Alabama State Board of Pharmacy, created and functioning pursuant to Sections 34-23-1 to 34-23-132, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  14.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 30, 40-41, 129-130, 133.

§ 34-23-91. Duties of officers; bonds of secretary and treasurer; compensation and expenses; meetings; quorum; funds and disbursements; books and records. [AL ST SEC 34-23-91]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#)

The president of the board shall preside at all of the board's meetings. The vice-president shall preside in the absence or inability of the president. The secretary of the board shall be the executive officer in charge of the board's office. The secretary shall make, keep, and be in charge of all records and record books required to be kept by the board, including a register containing all information which shall be required under this chapter. The secretary shall attend to the correspondence of the board and perform any other duties the board may require in keeping with the office of secretary. The secretary shall receive and record all fees collected under this chapter and, at regular intervals as ordered by the board, shall pay the fees to the treasurer of the board for its use. The secretary may have any forms printed and office supplies furnished as necessary to implement this chapter. The secretary and treasurer of the board shall each furnish bond in an amount to be fixed by the board and shall be conditioned upon the faithful performance and discharge of their respective official duties. The members of the board shall be paid the same per diem and travel allowance as is paid by law to state employees while engaged in the performance of the duties of the board, in addition to any daily compensation or allowance determined by the board. The board shall conduct meetings at least three times annually and more often when deemed necessary for the examination of applicants for licensure and for the transaction of business as may legally come before it. Public notice of all stated

meetings shall be given at least 30 days in advance of the meetings. At all meetings of the board, a majority shall constitute a quorum. The members of the board shall determine the place of meetings of the board. The treasurer of the board shall have custody of all funds derived from the various provisions of this chapter. All disbursements shall be made by check as authorized by vouchers signed by the president and secretary of the board. The books and records of the board as made and kept by the secretary or under his supervision shall be prima facie evidence of the matter therein recorded in any court.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 4; Acts 1971, No. 1952, p. 3171, § 1; Acts 1989, No. 89-235, p. 303, § 3; Acts 1993, No. 93-671, p. 1209, § 3.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1993 amendment, effective May 17, 1993, deleted "and in his absence or inability" following "meetings" in the first sentence; inserted "in the absence or inability of the president" following "preside" in the second sentence; in the fifth sentence, deleted "shall" preceding "form," substituted "any other" for "such other," and deleted "as" preceding "the board"; substituted "fees" for "same over" in the sixth sentence; in the seventh sentence, substituted "may" for "is empowered to," substituted "any forms" for "such forms," deleted "may be" preceding "necessary," and substituted "implement" for "carry out the provisions of"; substituted "and shall" for "the same to" in the eighth sentence; in the ninth sentence, substituted "determined" for "if any, as may be provided" and deleted "in such amount as may be determined by the board" following "determined by the board"; deleted the former tenth sentence which read: "The board shall likewise determine and fix the daily rate for payment of relief pharmacists"; deleted "such" preceding "business" in the present tenth sentence; substituted "the meetings" for "said meetings" in the eleventh sentence; in the thirteenth sentence, inserted "members of the board shall determine the" preceding "place" and deleted "shall be at the discretion of the members" following "board"; in the fourteenth sentence, deleted "in his" preceding "custody" and inserted "of" preceding "all funds"; and substituted "the secretary" for "he" throughout the section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  14.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 30, 40-41, 129-130, 133.

§ 34-23-92. Powers and duties generally. [AL ST SEC 34-23-92]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)

The board shall exercise, subject to the provisions of this chapter, the following powers and duties:

- (1) To adopt rules concerning the records and reports to be kept and made by a pharmacy relating to the filling of prescriptions and the handling and preservation of drugs.
- (2) To fix standards and requirements for licenses and permits except as otherwise specified in this chapter.
- (3) To make rules and regulations regarding sanitation consistent with state health regulations.
- (4) To employ such chemists, agents, clerical help and attorneys necessary for the proper administration of the duties of the board.
- (5) To employ a Chief Drug Inspector and other drug inspectors not to exceed six that it deems necessary to enforce the provisions of this chapter which are under the supervision of the board.
- (6) To adopt rules and regulations for the administration and enforcement of this chapter and not inconsistent herewith. Such rules and regulations shall be referenced to the section or sections of this chapter

which set forth the legislative standard which it interprets or to which it applies. Every such rule and regulation shall be adopted in accordance with the Alabama Administrative Procedure Act. A copy of every rule and regulation containing a requirement of general application shall be mailed to each registered pharmacist at least 10 days before the effective date thereof. The failure of a registered pharmacist to receive a copy of such rule or regulation shall not exempt him from the duty of compliance with the valid rules and regulations lawfully issued.

(7) To investigate violations of this chapter or any other law pertaining to the practice of pharmacy that may come to the knowledge of the board and institute or cause to be instituted before the board or in a proper court appropriate proceedings in connection therewith.

(8) To issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials or other evidence in matters pending before the board relating to the revocation, suspension or probation of any license. Those persons issued subpoenas and compelled to attend hearings or meetings in matters pending before the Board of Pharmacy shall be entitled to witness fees from Board of Pharmacy funds. Claims for witness fees shall be made on accepted State of Alabama voucher forms as appropriate. Travel and mileage expenses shall be reimbursed to witnesses in the amounts officially authorized to the board and its personnel at the time the service to the Board of Pharmacy is performed.

(9) The members of the board shall have the power and authority to administer oaths in connection with the duties of the board.

(10) The board shall make a written report annually of its receipts and disbursements to the Governor and to the State Pharmaceutical Association. Included in this report shall be the names of all registrants licensed to practice under this chapter and a record of all permits issued during the period covered by the report.

(11) It shall be the duty of the board to enforce the provisions of the State Barbiturate Act, the State Amphetamine Act, the State Narcotic Law and all other laws of the state which pertain to the practice of pharmacy, the examination of applicants, the licensing of pharmacists, the manufacture, packaging, repackaging, production, sale or distribution of drugs, chemicals and poisons, and all laws pertaining to standards for their strength and purity. The board may work in conjunction with other law-enforcement agencies to enforce the provisions of any law pertaining to the practice of pharmacy. Nothing in this section shall be construed to deprive the State Board of Health of any powers or duties otherwise prescribed by law including the enforcement of the narcotic law.

(12) It shall be the duty of the board to investigate alleged violations of this chapter or any rule or regulation published by the board and conduct hearings to revoke, suspend or probate any license or permit granted by the board under the provisions of this chapter and to invoke penalties not to exceed the sum of \$1,000.00 for each such violation(s) and to institute any legal proceedings necessary to effect compliance with this chapter; provided, that any person, firm or corporation subjected to such penalty or legal proceedings may take an appeal in accordance with the provisions of Section 34-23-94.

(13) On application of any person and payment of the cost therefor, the secretary of the board shall furnish, under its seal and signed by him, a certified copy of his license or permit, regulation or rule. In any court or proceeding, such copy shall be prima facie evidence of the fact of the issuance of such permit or license and the adoption of such rule or regulation.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 5; Acts 1989, No. 89-235, p. 303, § 3.)


REFERENCES

CROSS REFERENCES

As to duty of board to enforce statutes relative to controlled substances, see § 20-2-90.

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  14.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 30, 40-41, 129-130, 133.

ANNOTATIONS

CASENOTES

Reinstatement 1 enter p

1. Reinstatement

In his petition for reinstatement, pharmacist attempted to raise issues foreclosed by the revocation proceeding. He presented nothing for consideration in a reinstatement proceeding that had not been previously considered. Pharmacist's reinstatement petition did not substitute for his failure to properly appeal the 1988 proceeding. *Jones v. Alabama State Bd. of Pharmacy*, 624 So.2d 613 (Ala.Civ.App.1993).

Since neither the Alabama Administrative Procedures Act nor the Pharmacy Practice Act furnishes any right for reinstatement, or a hearing for reinstatement, mandamus will not lie to compel action on such a "right." *Jones v. Alabama State Bd. of Pharmacy*, 624 So.2d 613 (Ala.Civ.App.1993).

§ 34-23-93. Assisting prosecuting officers; legal counsel. [AL ST SEC 34-23-93]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members and officers to furnish the proper prosecuting officers with such evidence as it or they may ascertain to assist them in the prosecution of any violation of this chapter, and the board is authorized for such purposes to make such reasonable expenditures from the funds of the board as it may deem necessary to ascertain and furnish such evidence. The Attorney General of the state shall be the attorney for the board, but the board may in its discretion employ other counsel. It shall be the duty of the district attorney of the judicial circuit wherein any offense is committed to prosecute violations of this chapter. (Acts 1966, Ex. Sess., No. 205, p. 231, § 6.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics ☒14.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 30, 40-41, 129-130, 133.

§ 34-23-94. Judicial review of orders. [AL ST SEC 34-23-94]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References Annotations

From any order of the board any party affected thereby may appeal such ruling to the circuit court of the county where the party aggrieved resides. The notice of appeal shall be filed within 30 days from the receipt of such order or ruling. Appeals shall be governed by the judicial review provisions of the Alabama Administrative Procedure Act.

(Acts 1966, Ex. Sess., No. 205, p. 231, § 22; Acts 1985, 2nd Ex. Sess., No. 85-1002, p. 380, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics ☒15.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 42-44, 129-131, 133.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Construction 2 enter p
Exclusivity 3 enter p

1. Generally

When an appeal is prescribed by the Legislature from the action of any administrative body, the procedure, whatever it is, must be observed. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Where the Legislature has provided a method of review of the judicial and quasi-judicial orders of an administrative agency, and the aggrieved parties have undertaken to follow this statutory method of review, the court will not be placed in error by permitting such a method of review. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

Denial of license is in nature of quasi-judicial act. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

2. Construction

Language of section is plain and lucid and not requiring interpretation. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

3. Exclusivity

The intention of the Legislature was to require review of any or all judicial or quasi-judicial orders of the board by the method provided in this section. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

The decision of the board to deny licensure may be reviewed only by the method prescribed by this section. *Alabama State Bd. of Pharmacy v. Peterson*, 47 Ala.App. 201, 252 So.2d 319 (Ala.Civ.App.1971).

ARTICLE 5. THIRD PARTY PRESCRIPTION PROGRAM.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

The Third Party Prescription Program Act is preempted by federal law insofar as it bears on employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (29 U.S.C.A. § 1144). *Blue Cross and Blue Shield of Alabama v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258 (N.D.Ala.1983).

§ 34-23-110. Short title. [AL ST SEC 34-23-110]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations

This article shall be known and may be cited as the "Third Party Prescription Program Act."
(Acts 1981, No. 81-337, p. 477, § 1.)

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-111. "Third Party Prescription Program" defined. [AL ST SEC 34-23-111]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations

As used in this article, the term "Third Party Prescription Program" shall mean any system of providing for the reimbursement of pharmaceutical services under a contractual arrangement or agreement between a provider of such services and another party who is not the consumer of those services. Such programs may include, but not be limited to, employee benefit plans whereby a consumer receives prescription drugs or other pharmaceutical services and those services are paid for by an agent of the employer or others.
(Acts 1981, No. 81-337, p. 477, § 2.)

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-112. Required contractual provisions. [AL ST SEC 34-23-112]

Current through End of 2003 Organizational, Regular and 1st Special Session.


References Annotations

Any agreement or contract entered into in this state between the program administrator of a third party program and a pharmacy shall include a statement of the method and amount of reimbursement to the pharmacy for services rendered to persons enrolled in the program, the frequency of payment by the program administrator to the pharmacy for such services rendered, and a method for the adjudication of complaints or the settlement of disputes between the parties.
(Acts 1981, No. 81-337, p. 477, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ANNOTATIONS

CASENOTES

Cited in Blue Cross & Blue Shield v. Peacock's Apothecary, Inc., 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-113. Cancellation of program; use of identity card after cancellation. [AL ST SEC 34-23-113]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)

(a) The administrator of a program shall notify all pharmacies enrolled in said program of any cancellation of coverage of benefits of any group enrolled in the program at least 30 days prior to the effective date of such cancellation.


(b) All persons enrolled in a program shall be notified of its cancellation, and the administrator of the program shall make every reasonable effort to gain possession of any plan identification cards such persons may have been issued pursuant to the provisions of the program.

(c) Any person who utilizes a program identification card to obtain services from a pharmacy after having received notice of the cancellation of his benefits shall be liable to the program administrator for all money paid by the program administrator for any services received pursuant to the illegal use of said identification card. (Acts 1981, No. 81-337, p. 477, § 4.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ANNOTATIONS

CASENOTES

Cited in Blue Cross & Blue Shield v. Peacock's Apothecary, Inc., 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-114. Denial of payment. [AL ST SEC 34-23-114]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)


(a) No program administrator shall deny payment for services to any pharmacy which may have resulted from the fraudulent or illegal use of any identification card by any person unless the pharmacy has been notified that the card has been canceled or discontinued and that the program administrator has been unsuccessful in attempting to regain possession of the card.

(b) No program administrator shall withhold any payments to any pharmacy beyond the time period specified in the payment schedule provisions of the agreement, except that individual claims for payment may be returned to the pharmacy for reasons such as incomplete or illegible information and may then be resubmitted by the pharmacy to the program administrator after appropriate corrections have been made. (Acts 1981, No. 81-337, p. 477, § 5.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-115. Reimbursement rates. [AL ST SEC 34-23-115]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)


No agreement between a program administrator and a pharmacy shall establish reimbursement rates or procedures that result in reimbursement rates for services rendered to persons covered by the plan which are less than the usual and customary rates paid by consumers not covered by a third party plan for the same or similar services.

(Acts 1981, No. 81-337, p. 477, § 6.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  11.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 2-10, 29-30, 33, 39-40.

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-116. Article not applicable to Medicaid services or to services reimbursed by nonprofit corporations operating health care service plans. [AL ST SEC 34-23-116]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Annotations](#)

This article shall not apply to any services rendered pursuant to provisions of the Alabama Medicaid Program or to any corporation organized under the provisions of Title 10, Chapter 4, Article 6, for establishment and operation of health care service plans.

(Acts 1981, No. 81-337, p. 477, § 7; Acts 1983, No. 83-637, p. 986, §§ 1, 2.)

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-117. No programs to be instituted until notice given. [AL ST SEC 34-23-117]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Annotations](#)

After June 27, 1981, no third party prescription programs shall be instituted in this state unless:

(1) The program administrator has given written notice of the provisions of the particular program to all pharmacies in this state as defined in Section 34-23-1.

(2) All pharmacies in this state as defined by Section 34-23-1 have had 30 days from the date of said notice to enroll in that particular program.

(Acts 1981, No. 81-337, p. 477, § 8.)

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

§ 34-23-118. Compliance with article required of all programs. [AL ST SEC 34-23-118]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)

After June 27, 1981, no third party prescription program shall be instituted, nor shall existing agreement or contract be renewed unless they are in compliance with the provisions of this article.

(Acts 1981, No. 81-337, p. 477, § 11.)

REFERENCES

CROSS REFERENCES

For requirement that pharmacies must register with state before an organization offers a pharmaceutical prescription program, see § 27-45-20.

ANNOTATIONS

CASENOTES

Cited in *Blue Cross & Blue Shield v. Peacock's Apothecary, Inc.*, 567 F.Supp. 1258, 4 Employee Benefits Cas. (BNA) 1833 (N.D.Ala.1983).

ARTICLE 6. PHARMACY TECHNICIANS.

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this article became effective May 16, 1996.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 680-X-2-.14, Board of Pharmacy; Practice of Pharmacy: The Role of Technicians in Pharmacies in Alabama.

§ 34-23-130. Definitions. [AL ST SEC 34-23-130]

Current through End of 2003 Organizational, Regular and 1st Special Session.

As used in this article, the following terms shall have the following meanings:

(1) Pharmacy Functions. Those functions performed in a pharmacy department which do not require the professional judgment of a licensed pharmacist.

(2) Pharmacy Technician. An individual, other than an intern, extern, or an assistant pharmacist, who performs pharmacy functions under the direct supervision of a licensed pharmacist.

(3) Supervision. The direct on-site overseeing of the performance of assigned or delegated duties or functions.

(Acts 1996, No. 96-496, p. 625, § 1.)

§ 34-23-131. Registration and supervision of pharmacy technicians; rules and regulations; fees. [AL ST SEC 34-23-131]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

(a) A pharmacy technician shall not perform pharmacy functions or be present in the prescription department of a pharmacy unless he or she is under the direct supervision of a licensed pharmacist. A pharmacy technician shall not perform pharmacy functions or be present in the prescription department of a pharmacy unless he or she is registered by the board.

(b) When supervision is required, a licensed pharmacist shall be jointly responsible and liable for the actions of a pharmacy technician.


(c) A pharmacy technician shall register and pay a fee as determined by the board before performing any pharmacy functions. The board shall develop rules and regulations relating to the registration of all pharmacy technicians. The registration of a pharmacy technician shall be renewable annually upon payment of the required fee.

(Acts 1996, No. 96-496, p. 625, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  13.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 6, 31-38, 40-41.

§ 34-23-132. Revocation or suspension of registration; probation. [AL ST SEC 34-23-132]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


The board shall revoke or suspend the registration of a pharmacy technician or place on probation a pharmacy technician for any of, but not limited to, the following reasons:

- (1) Willful violation of any provision of this article or the Alabama Uniform Controlled Substances Act.
 - (2) Willful violation of any rule or regulation promulgated in accordance with this article or the Alabama Uniform Controlled Substances Act.
 - (3) Action which threatens the public health, safety, or welfare.
 - (4) Conviction of a felony or misdemeanor involving moral turpitude.
 - (5) Conviction of a felony or misdemeanor involving a drug related offense of a legend drug or controlled substance.
 - (6) Obtaining the pharmacy technician registration by fraudulent means.
 - (7) Violation of the laws regulating the sale or dispensing of narcotics, exempt narcotics, or drugs bearing the label "caution, federal law prohibits dispensing without prescription," or similar wording which causes the drugs to be classified as prescription legend drugs.
- (Acts 1996, No. 96-496, p. 625, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Drugs and Narcotics  15.

Corpus Juris Secundum:

C.J.S. Drugs and Narcotics §§ 42-44, 129-131, 133.

ARTICLE 7. COMPOUNDING OF DRUGS.

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this chapter is effective September 1, 2003.

§ 34-23-150. Definitions. [AL ST SEC 34-23-150]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

As used in this article, the following terms shall have the following meanings:

- (1) Board. The Alabama State Board of Pharmacy.
- (2) Component. Any ingredient used in the compounding of a drug product.
- (3) Compounding. The preparation, mixing, assembling, packaging, and labeling of a drug or device as the result of a licensed practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice.
 - a. Compounding may also be for the purpose of, or as incident to, research, teaching, or chemical analysis.
 - b. Compounding includes the preparation of drugs or devices in anticipation of prescription drug

orders based on routine, regularly observed prescribing patterns.

c. Reconstitution of commercial products is not considered compounding for purposes of this article.

(4) Compounded over the counter (OTC) products. A medical product that is prepared, packaged, and labeled in a pharmacy that can be sold by the pharmacy without a prescription.

(5) Manufacturing. The production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its container, and the promotion and marketing of such drugs or devices.

Manufacturing also includes any preparation of a drug or device that is given or sold for resale by a pharmacy, practitioner, or other person. The distribution of inordinate amounts of compounded products without a prescriber/patient/pharmacist relationship is considered manufacturing.

(6) Pharmacy technician. A person, registered with the board, who assists the pharmacist in the practice of compounding.

(7) Reasonable amounts of compounded products in inventory. The amount that is required to meet historical dispensing needs.

(Act 2003-389, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-151. Continuing education; technician assistance; duties of pharmacist. [AL ST SEC 34-23-151]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

(a) Any pharmacist who engages in drug compounding shall be proficient in compounding and shall continually expand his or her compounding knowledge by participating in seminars or studying appropriate literature, or both.

(b) Pharmacy technicians may assist pharmacists in the preparation of compounds. When a written procedure for a compound is not on file at the pharmacy, a pharmacist must direct the preparation of the compound. At all times, a pharmacist shall verify the weight or volume of all active ingredients of a compound. While compounding, there shall be no more than three technicians per pharmacist.

(c) A pharmacist shall have responsibility to do all of the following:

(1) Verify all prescriptions.

(2) Approve or reject all components of the compounded product, drug product containers, closures, and labeling.

(3) Prepare and review all compounding records to assure that no errors have occurred in the compounding process.

(4) Assure the proper maintenance, cleanliness, and use of all equipment used in a prescription compounding practice.

(5) Assure that only personnel authorized by the supervising pharmacist shall be in the immediate vicinity of the drug compounding operation.

(Act 2003-389, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-152. Designation and maintenance of compounding area. [AL ST SEC 34-23-152]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

Any pharmacy engaged in compounding shall have a specifically designated and adequate area or space for the orderly compounding of prescriptions. The area used for the compounding of drugs shall be maintained in a good state of repair. The compounding area shall have smooth cleanable surfaces to include walls, ceilings, and floors. Adequate lighting and ventilation shall be provided in all compounding areas. Potable water shall be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug product. Areas used for compounding shall be maintained in a clean and sanitary condition. (Act 2003-389, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-153. Use, maintenance, and inspection of compounding equipment. [AL ST SEC 34-23-153]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

Equipment used in the compounding of drug products shall be of appropriate design and capacity, as well as suitably located to facilitate operations for its intended use, cleaning, and maintenance. Compounding equipment shall be of suitable composition so the surfaces that contact components shall not be reactive, additive, or absorptive so as to alter the purity of the product compounded. Equipment and utensils used for compounding shall be cleaned and sanitized prior to use to prevent contamination. Equipment and utensils shall be stored in a manner to protect from contamination. Automated, mechanical, electronic, limited commercial scale manufacturing, or testing equipment and other types of equipment may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected, calibrated, if necessary, or checked to ensure proper performance. Immediately prior to the initiation of compounding operations, the equipment and utensils shall be inspected by the pharmacist and determined to be suitable for use. When potent or hazardous drugs, such as antibiotics, cytotoxins, and steroid hormones, are involved, appropriate measures shall be utilized in order to prevent cross-contamination and proper disposal procedures shall be followed. Measures shall include either the dedication of equipment for such operations or the meticulous cleaning of equipment prior to its use for the preparation of other drugs. (Act 2003-389, § 4.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-154. Drug components to meet certain requirements. [AL ST SEC 34-23-154]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

Pharmacists compounding prescriptions shall use their professional judgment in first receiving, storing, or using drug components that meet official compendia requirements or other high quality sources. Bulk drugs and other

chemicals or materials used in the compounding of drugs shall be stored in adequately labeled containers in a clean, dry area or, if required, under proper refrigeration.
(Act 2003-389, § 5.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-155. Drug product containers and closures. [AL ST SEC 34-23-155]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#)

Drug product containers and closures shall be handled and stored in a manner to prevent contamination and to permit inspection and cleaning of the work area. Containers and closures shall be of suitable material in order not to alter the compounded drug as to quality, strength, or purity.
(Act 2003-389, § 6.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-156. Compounding procedures. [AL ST SEC 34-23-156]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#)

The board shall establish written procedures for the compounding of drug products to assure that the finished products have the identity, strength, quality, and purity they purport to have or are represented to possess. The procedures shall include, but not be limited to, a listing of the components, their amounts in weight or volume, the lot number of the components, if available, the order of component mixing, a description of the compounding process, and a designated name for the finished product. The procedures shall be followed in the execution of the compounding procedure. Components shall be accurately weighed, measured, or subdivided, as appropriate. The operations shall be checked and rechecked by the compounding pharmacist at each stage of the process to ensure that each weight and measure is correct as stated in the written compounding procedures. Pharmacists shall determine that all finished products have an acceptable degree of weight variation among capsules, and shall assure a reasonable uniformity and integrity of all compounded products.
(Act 2003-389, § 7.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-157. Components transferred to nonoriginal container; advance product preparation; labeling.[AL ST SEC 34-23-157]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

(a) If a component is transferred from the original container to another container, including, but not limited to, a powder being taken from the original container and stored in another container, the new container shall be identified with the following information:

- (1) Component name and supplier.
- (2) Lot number and expiration date, if available.
- (3) Strength and concentration.

(b) Products prepared in anticipation of a prescription prior to receiving a valid prescription shall be prepared in reasonable amounts. Products shall be labeled or documentation referenced with all of the following information:

- (1) A complete list of ingredients or designated name of the preparation.
- (2) Preparation date.
- (3) Beyond use date.
- (4) Storage under conditions dictated by composition and stability, including storage in a clean, dry place or in the refrigerator.
- (5) Batch or lot number.

(c) Upon the completion of the drug preparation operation, the pharmacist shall examine the product for correct labeling. The prescription label shall contain all of the information required of other prescriptions.
(Act 2003-389, § 8.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-158. Retention of records. [AL ST SEC 34-23-158]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

Any procedures or other records required to comply with good compounding practices shall be retained for the same period of time as required for retention of prescription records. All records required to be retained under good compounding practices, or copies of such records, shall be readily available for authorized inspection. Computer information and the hard copy of the prescription shall indicate that the prescription is to be compounded. Adequate records are required to be kept of any controlled dangerous substances or scheduled drugs which are used in compounding.

(Act 2003-389, § 9.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-159. Preparation of compounded drug products for over the counter sale. [AL ST SEC 34-23-159]

Historical Notes

A pharmacy may prepare a compounded drug product to be sold over the counter without a prescription order. The product shall not contain an ingredient which exceeds recommended strengths and doses for over the counter drugs. The finished product shall not be one for which a prescription is required. It shall be properly labeled with the product's name, directions for use, list of active ingredients, and any necessary warnings. A compounded product shall be sold directly to the consumer after professional interaction or consultation between the pharmacist and the consumer. The product may be prepared in advance in reasonable amounts in anticipation of estimated needs. The product shall be stored within the prescription department. The product may not be sold in bulk to other pharmacies or vendors for resale.

(Act 2003-389, § 10.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-160. Preparation of compounded drug products for prescriber's office use; labeling. [AL ST SEC 34-23-160]

Historical Notes

(a) A pharmacy may prepare a compounded drug product for a prescriber's office use. An order by a prescriber indicating the formula and quantity ordered shall be filed in the pharmacy. The product shall be administered in the prescriber's office and shall not be dispensed to the consumer. A record of the compounded drug product may be kept as a prescription record in the computer of the pharmacy. A label may be generated and a number assigned by the computer of the pharmacy for the compounded product. A record of the product's written procedure shall be on file in the pharmacy as provided in Section 34-23-156. A record of the product's sale to the prescriber shall remain on file at the pharmacy for not less than one year. The record shall contain the following information:

- (1) The name and address of the prescriber.
- (2) The date of sale.
- (3) A description and amount of the product sold.
- (b) The label on the compounded product shall include the following information:
 - (1) The designated name and the strength of the finished product.
 - (2) The quantity dispensed.
 - (3) The date on which the product was compounded.
 - (4) The beyond use date.
 - (5) A lot or batch number.
 - (6) Any other information the pharmacist deems necessary.
 - (7) The name and address of the pharmacy.

- (c) The label may not include the phrase "For Office Use."

(Act 2003-389, § 11.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-161. Prescriptions for animals. [AL ST SEC 34-23-161]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#)

Drugs for animals may be compounded based upon an order or prescription. Prescriptions for animals shall be handled and filled in the same manner as are prescriptions for humans.
(Act 2003-389, § 12.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

§ 34-23-162. Rules and regulations. [AL ST SEC 34-23-162]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#)

The board shall promulgate such rules and regulations as are necessary for the implementation, administration, and enforcement of this article.
(Act 2003-389, § 13.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective September 1, 2003.

ACT No. 2004-450

1 SB233
2 63069-2
3 By Senator Butler
4 RFD: Governmental Affairs
5 First Read: 05-FEB-04



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ENROLLED, An Act,

To amend Sections 34-23-30, 34-23-32, 34-23-52, and 34-23-131, Code of Alabama 1975, relating to permits and licenses under the Alabama State Board of Pharmacy, to establish and provide for biennial licensing, to allow the board to determine certain fees; and to establish certain continuing education requirements.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-23-30, 34-23-32, 34-23-52, and 34-23-131, Code of Alabama 1975, are amended to read as follows:

"§34-23-30.

"Every pharmacy, hospital pharmacy, drugstore, pharmacy department, prescription department, prescription laboratory, dispensary, apothecary or any other establishment with a title implying the sale, offering for sale, compounding, or dispensing of drugs in this state shall register biennially and receive a permit from the Board of Pharmacy. Any person desiring to open, operate, maintain, or establish a pharmacy in this state shall apply to the board for a permit at least 30 days prior to the opening of the business. No pharmacy shall open for the transaction of business until it has been registered, inspected, and a permit

1 issued by the board. The application for a permit shall be
2 made on a form prescribed and furnished by the board which
3 when properly executed shall indicate the ownership desiring
4 such permit and the names and license numbers of all licensed
5 pharmacists employed as well as the location of the pharmacy
6 and other information as the board may require. If more than
7 one pharmacy is operated by the same owner, a separate
8 application for registration shall be made and a separate
9 permit issued for each such establishment. All permits issued
10 under this section shall become due on October 31 and shall
11 become null and void on December 31 of even-numbered years.
12 Every application for a permit for a new pharmacy shall be
13 accompanied by a fee to be determined by the board, but said
14 fee shall not be less than one hundred dollars (\$100) nor more
15 than two hundred dollars (\$200). Every application for a
16 renewal permit shall be accompanied by a fee to be determined
17 by the board, but the fee shall not be less than fifty dollars
18 (\$50) nor more than one hundred fifty dollars (\$150). Every
19 application for a permit due to transfer of ownership shall be
20 accompanied by a fee to be determined by the board, but the
21 fee shall not be less than fifty dollars (\$50) nor more than
22 one hundred fifty dollars (\$150). Each application for the
23 renewal of a permit shall be made on or before October 31 of
24 each even-numbered year, at which time the previous permit
25 shall become null and void on December 31 of even-numbered

1 years. A penalty of twenty-five dollars (\$25) for each overdue
2 month shall be assessed in addition to the permit fee for
3 renewal of delinquent permits. The secretary of the board
4 shall issue a permit for each pharmacy whose application is
5 found to be satisfactory by the board. Permits issued under
6 this section shall not be transferable. Any change in the
7 control of ownership or licensed pharmacists shall be reported
8 to the board in writing within 10 days of such occurrence. If
9 the pharmacy is owned by a corporation, the permit shall be
10 issued in the name of the corporation. It shall be the duty of
11 the owners of pharmacies who are not licensed pharmacists to
12 immediately notify the board upon the termination of
13 employment of licensed pharmacists and to cause the surrender
14 of permits as indicated. The further operation of the pharmacy
15 in the absence of licensed pharmacists is forbidden; provided,
16 that the nonregistered owner shall have a period of 30 days
17 within which to comply with this provision. The next of kin of
18 any deceased licensed pharmacist owner shall have a period of
19 30 days within which to comply with the provisions of this
20 chapter, during which time no prescriptions shall be filled
21 unless a licensed pharmacist is on duty. No mail order
22 pharmacy shall transact business in this state without a
23 permit from the board.

24 "Any person who violates this section shall be
25 guilty of a misdemeanor."

1 "\$34-23-32.

2 "(a) Every manufacturer, bottler, packer,
3 repackager, or wholesale drug distributor, of drugs,
4 medicines, chemicals, or poisons for medicinal purposes shall
5 register biennially with the board by application for a permit
6 on a form furnished by the board and accompanied by a fee to
7 be determined by the board as follows:

8 "(1) The fee shall not be less than five hundred
9 dollars (\$500) nor more than two thousand dollars (\$2,000) for
10 a new establishment.

11 "(2) The fee shall not be less than two hundred
12 fifty dollars (\$250) nor more than one thousand dollars
13 (\$1,000) for a renewal permit.

14 "(3) The fee shall not be less than two hundred
15 fifty dollars (\$250) nor more than one thousand dollars
16 (\$1,000) for a permit due to transfer of ownership.

17 "(b) A holder of a permit shall employ a full-time
18 licensed pharmacist whose principal duty shall be confined to
19 on-premise pharmaceutical operations. Wholesale drug
20 distributors, who strictly limit their operation to
21 distribution of drugs, medicines, chemicals, or poisons for
22 medicinal purposes are exempt from the requirement to employ a
23 full-time licensed pharmacist.

1 "(c) The professional practice of any physician
2 licensed to practice medicine is exempt from the requirements
3 of this section.

4 "(d) All permits issued under this section shall
5 become due on October 31 and shall become null and void on
6 December 31 of even-numbered years. Each application for the
7 renewal of the permit shall be made on or before December 31
8 of even-numbered years. A penalty of twenty-five dollars (\$25)
9 for each overdue month shall be assessed in addition to the
10 permit fee for renewal of delinquent permits. For each
11 application for a permit made and found to be satisfactory by
12 the board, the secretary of the board shall issue to the
13 applicant a permit for such manufacturing or wholesale
14 establishment, which permit shall be displayed in a
15 conspicuous place.

16 "(e) All holders of a permit shall, before shipping
17 any drug bearing the legend, "caution, federal law prohibits
18 dispensing without prescription" or similar wording causing
19 these drugs to be known as legend drugs to new customers,
20 assure themselves that the recipient is either a duly licensed
21 doctor of medicine, dentistry, or veterinary medicine or holds
22 a registered pharmacy permit from the board by contacting the
23 office of the board. No holder of a permit shall ship any
24 legend drug to any person or firm after receiving written
25 notice from the board that the person or firm no longer holds

1 a registered pharmacy permit. Any person violating this
2 section shall be guilty of a misdemeanor."

3 "\$34-23-52.

4 "(a) All certificates of licensure shall expire on
5 December 31 of even-numbered years. Every licensed pharmacist
6 in order to continue to be licensed shall pay a biennial
7 renewal fee to be determined by the board, but the fee shall
8 not be less than twenty-five dollars (\$25) nor more than one
9 hundred fifty dollars (\$150) to the secretary of the board,
10 the fee being due on October 31 and delinquent after December
11 31 of even-numbered years except, that holders of life
12 certificates to practice pharmacy previously issued shall not
13 be required to pay a renewal fee. The payment of the renewal
14 fee shall entitle the registrants to renewal of their
15 certificates at the discretion of the board. If any pharmacist
16 shall fail to pay a renewal fee on or before the due date, the
17 holder of the certificate may be reinstated as a licensed
18 pharmacist only upon payment of a penalty of ten dollars (\$10)
19 for each lapsed month and all lapsed fees, provided the lapsed
20 time of registration shall not exceed five years, in which
21 case reinstatement may be had only upon satisfactory
22 examination by the board.

23 "(b) In addition to any fee requirements, each
24 pharmacist is required to complete 15 hours of continuing

1 education per calendar year, of which three hours shall be
2 live presentation."

3 "§34-23-131.

4 "(a) A pharmacy technician shall not perform
5 pharmacy functions or be present in the prescription
6 department of a pharmacy unless he or she is under the direct
7 supervision of a licensed pharmacist. A pharmacy technician
8 shall not perform pharmacy functions or be present in the
9 prescription department of a pharmacy unless he or she is
10 registered by the board.

11 "(b) When supervision is required, a licensed
12 pharmacist shall be jointly responsible and liable for the
13 actions of a pharmacy technician.

14 "(c) A pharmacy technician shall register and pay a
15 fee as determined by the board before performing any pharmacy
16 functions. The board shall develop rules and regulations
17 relating to the registration of all pharmacy technicians. The
18 registration of a pharmacy technician shall be renewable
19 biennially in odd-numbered years upon payment of the required
20 fee.

21 "(d) In addition to any other registration
22 requirements, a pharmacy technician shall complete three hours
23 of continuing education annually, of which one hour shall be
24 live presentation."

SB233

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

Page 8

SB233

Lucy Baxley

President and Presiding Officer of the Senate

Monty H. Smith

Speaker of the House of Representatives

SB233

Senate 08-APR-04

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 05-MAY-04

APPROVED 5-13-04
TIME 9:20 am
Bob Riley
GOVERNOR

By: Senator Butler

Alabama Secretary Of State

Act Num....: 2004-450
Bill Num....: S-233

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Recv'd 05/13/04 12:51pmHMB

CHAPTER 2. CONTROLLED SUBSTANCES.

ARTICLE 3. REGULATION OF MANUFACTURE AND DISTRIBUTION.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificates.

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics §§ 27, 28.

ANNOTATIONS

CASENOTES

Cited in Jones v. State, 432 So.2d 19 (Ala.Crim.App.1983).

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected. [AL ST SEC 20-2-50]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards.
(Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

§ 20-2-51. Registration of persons manufacturing, distributing or dispensing controlled substances -- General requirements. [AL ST SEC 20-2-51]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[References](#) [Annotations](#)

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

(Acts 1971, No. 1407, p. 2378, § 302.)

REFERENCES

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics §§ 107, 108.

ANNOTATIONS

CASENOTES

1. Burden of proving exception

State not required to prove defendant not within exception. Although this section provides an "exceptions" provision concerning who may lawfully dispense drugs under this chapter, the exceptions provision is not a part of the penalty clause itself. Thus negating the "matter of exception" is only necessary where the exception defining the crime is set forth in the enacting clause. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

2. Possession pursuant to lawful order

Possession pursuant to lawful order not violation. Possession of a controlled substance by an ultimate user or person in possession of a controlled substance pursuant to a lawful order of a practitioner does not constitute a violation of the Controlled Substances Act. *Walker v. State*, 358 So.2d 800 (Ala.Crim.App.1978).

Cited in *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Crim. App. 1975); *Toles v. State*, 416 So.2d 768 (Ala.Crim.App.1982).

§ 20-2-52. Registration of persons manufacturing, distributing or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration. [AL ST SEC 20-2-52]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances and the existence in the

applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

(Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

REFERENCES

CROSS REFERENCES

For Controlled Substances Therapeutic Research Act, see § 20-2-110 et seq.

ADMINISTRATIVE CODE

4 Ala. Admin. Code 270-X-2-.11, Board of Dental Examiners; Dentists.

§ 20-2-53. Registration of persons manufacturing, distributing or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay. [AL ST SEC 20-2-53]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#) [Annotations](#)

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus,

or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgment of the circuit court under Section 41-22-21. No security shall be required of the certifying board.

(Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, p. 359, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2002 amendment, effective June 1, 2002, designated subsections (a), (b), and (d) and added subsection (c); in subsection (a) inserted "the Alabama Administrative Procedure Act and"; in subsection (b) substituted "judicial" for "a", substituted "in accordance with the provisions of Section 41-22-20" for "within 30 days after the entry of said order", and deleted the second through sixth sentences; and in subsection (d) substituted "obtain a review of any final judgment of the circuit court under the provisions of Section 41-22-21. No security shall be required of the certifying board." For "appeal directly to the supreme court of Alabama by taking such appeal within 42 days after the date of the making of and entering of its judgment by the circuit court." and deleted the last two sentences.

Code Commissioner's Notes:

Acts 1982, No. 82-492, p. 815, § 1, provides: "That it is the intent of the legislature to provide a mechanism for judicial review of the actions of certifying boards under the Alabama Uniform Controlled Substances Act so that the rights of a registrant are not prejudiced prior to review by the circuit court of Montgomery county."

Section 3 of such act provides that the provisions of the act shall take precedence over the provisions of Chapter 22 of Title 41.

REFERENCES

CROSS REFERENCES

As to controlled substance registration certificate, see § 34-24-61.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

ANNOTATIONS

CASENOTES

1. Relationship with other laws

This section takes precedence over the provisions of the Administrative Procedure Act, § 41-22-1 et seq. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

2. De novo hearing

Legislative intent to provide de novo hearing. Although this section is somewhat clumsily phrased, the clear intention of the legislature is to provide for a de novo hearing in its truest sense. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

Right to practice medicine is a property right which may be denied only if the denial is consonant with due process, and due process requires, among other things, a hearing consistent with the essentials of a fair trial, which include holding a de novo hearing when required by law. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

3. Sufficiency of evidence

Evidence held insufficient to support denial of certificate. Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure generally. [AL ST SEC 20-2-54]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [References](#) [Annotations](#)

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesis.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;

or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances. (Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, 3rd Sp. Sess., p. 873, § 2; Act 2003-9997, § .)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subsection (d) substituted "Drug Enforcement Administration of the United States Department of Justice" for "bureau".

Code Commissioner's Notes:

Acts 1983, No. 83-890, § 1, provides: "That it is the intent of the legislature to take cognizance of the fact that significant amounts of amphetamines and amphetamine like stimulant drugs, classified under schedule II of the Alabama Uniform Controlled Substances Act, are each year being diverted to illegal use and that such diversion contributes substantially to the problems of illegal drug trafficking in the state of Alabama; further that it is the legislative intent that the utilization of amphetamines and amphetamine like drugs and compounds, including sympathomimetic amine drugs or compounds thereof, and other schedule II nonnarcotic stimulant drugs should be limited to the treatment of those conditions where the safety and effectiveness of the drugs has been clearly demonstrated."

REFERENCES

CROSS REFERENCES

As to assessment of administrative fines for violation of this section, see § 34-24-380.

As to controlled substance registration certificate, see § 34-24-61.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics § 109.

ANNOTATIONS

CASENOTES

1. Legitimate medical purpose standard

The "for a legitimate medical purpose" standard is clearly specified in paragraph (a)(5)a. of this section and incorporated by implication into the "except as authorized by this chapter" language of former § 20-2-70(a). *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

2. "Dispensing"

"Dispensing" encompasses "prescribing". As used in subdivision (a)(5) of this section dispensing includes the act of prescribing. Since the broader grouping of selling, furnishing or giving away encompasses the act of dispensing, it, likewise, includes the act of prescribing. *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

3. Sufficiency of evidence

Evidence held insufficient to support denial of certificate. Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54.1. Rules and regulations. [AL ST SEC 20-2-54.1]

Current through End of 2003 Organizational, Regular and 1st Special Session.

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.
(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

§ 20-2-55. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause. [AL ST SEC 20-2-55]

Current through End of 2003 Organizational, Regular and 1st Special Session.

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.
(Acts 1971, No. 1407, p. 2378, § 305.)

§ 20-2-56. Maintenance of records and inventories by registrants generally. [AL ST SEC 20-2-56]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State

Board of Pharmacy.
(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

ANNOTATIONS

CASENOTES

Cited in *Miller v. State*, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974).

§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant. [AL ST SEC 20-2-57]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

(Acts 1971, No. 1407, p. 2378, § 307.)

ANNOTATIONS

CASENOTES

Cited in *Miller v. State*, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974).

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies. [AL ST SEC 20-2-58]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes References Annotations

(a) A pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, effective August 7, 1995, rewrote former subsection (a); added present subsections (b) and (c); and made nonsubstantive changes.

The 1998 amendment, effective August 1, 1998, in subdivision (d)(2) deleted the last sentence which read: "Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter 'C' no less than one inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for noncontrolled substances."

REFERENCES

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics § 107.

ANNOTATIONS

CASENOTES

1. Lesser included offenses

Failure to keep records of prescriptions is lesser included offense of unlawful sale of controlled substances without prescription. The one element separating the two offenses is authorization by a prescribing physician to sell the controlled substance. Ex parte Stephens, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

2. ---- Jury instructions, lesser included offenses

Failure to charge jury of lesser included offense of failure to keep records. In a prosecution for unlawful sale of controlled substances without a prescription, where there was evidence offered which could establish that the pharmacist had oral prescriptions before dispensing the drugs, but failed to properly document them, the trial court erred in refusing to charge the jury on the lesser included offense of failure to keep records of prescriptions. Ex parte Stephens, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

Cited in Miller v. State, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974); Chesteen v. State, 365 So.2d 102 (Ala.Crim.App.1978), cert. quashed 365 So.2d 108 (Ala.).

ARTICLE 4. OFFENSES AND PENALTIES.

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes:

Acts 1987, No. 87-603, which amended §§ 20-2-71 through 20-2-74, repealed §§ 20-2-70, 20-2-76 and 20-2-77, and enacted §§ 13A-12-210 through 13A-12-215, provides in § 11: "The provisions of this act are to be included in the Code of Alabama 1975, as a part of Title 13A, "Alabama Criminal Code", and all provisions of Title 13A, including the Habitual Felony Offender Act, are applicable thereto; provided that any of the provisions of this act may also be included in Title 20."

REFERENCES

CROSS REFERENCES

As to drug trafficking offenses, see §§ 13A-12-230 through 13A-12-232.
As to sale of drugs on or near school campus, see § 13A-12-250.
As to drug paraphernalia offenses, see § 13A-12-260.
As to sale of drugs at or near housing project, see § 13A-12-270.
As to inchoate drug offenses, see §§ 13A-12-201 through 13A-12-205.
As to drug possession and sale offenses, see §§ 13A-12-210 through 13A-12-216.

ANNOTATIONS

CASENOTES

1. Generally

Trial court was required to consider defendant's prior drug conviction for enhancement purposes when sentencing defendant for sexual abuse in the first degree under Habitual Felony Offender Act, though drug conviction occurred before enactment of amendment to Drug Crimes Act that repealed recidivist provision within Controlled Substances Act for conduct occurring after its effective date and made drug-related crimes subject to Habitual Felony Offender Act, where conduct giving rise to conviction for sexual abuse in first degree occurred after effective date of amendment to Drug Crimes Act. *Estes v. State*, 776 So.2d 206 (Ala.Crim.App.1999). Sentencing And Punishment ☒ 1219

Sentence for possession of controlled substance was properly enhanced pursuant to Habitual Felony Offender Act, rather than pursuant to Controlled Substances Act, where conduct giving rise to conviction occurred after effective date of Drug Crimes Amendments Act that repealed recidivist provision of Controlled Substances Act. *Burton v. State*, 728 So.2d 1142 (Ala.Crim.App.1997), opinion after remand, rehearing denied. Sentencing And Punishment ☒ 1212

In forfeiture proceeding, state may establish prima facie case by showing that item to be forfeited was used, or was intended to be used, in violation of Uniform Controlled Substances Act. *McCloud v. State*, 715 So.2d 230 (Ala.Civ.App.1998), rehearing denied, certiorari denied. Controlled Substances ☒ 169

Defendant who was convicted of felony drug offense prior to Oct. 21, 1987, was entitled to relief from sentence which had been imposed under Habitual Felony Offender Act (HFOA); prior to that date, HFOA was not applicable to drug offenses. *Dobbins v. State*, 716 So.2d 231 (Ala.Crim.App.1997), opinion after remand, rehearing denied. Criminal Law ☒ 1556

§ 20-2-70. Prohibited acts A. Repealed by Acts 1987, No. 87-603, p. 1047, § 12, effective October 21, 1987. [AL ST SEC 20-2-70]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-71. Prohibited acts B. [AL ST SEC 20-2-71]

(a) It is unlawful for any person:

(1) Who is subject to Article 3 of this chapter to distribute or dispense a controlled substance in violation of Section 20-2-58;

(2) Who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; provided, however, that upon the first conviction of a violator under this provision said violator shall be guilty of a Class A misdemeanor. Subsequent convictions shall subject the violator to the felony penalty provision set forth in subsection (b) of this section.

(4) To refuse an entry into any premises for any inspection authorized by this chapter; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a Class B felony.



(Acts 1971, No. 1407, p. 2378, § 402; Acts 1987, No. 87-603, p. 1047, § 6.)

ANNOTATIONS

CASENOTES

1. Knowledge

Knowledge by accused of presence of controlled substances is essential element and prerequisite to conviction for offense of illegal possession of controlled substance under Controlled Substances Act; such knowledge may be, and usually is, established by circumstantial evidence. *Bright v. State*, 673 So.2d 851 (Ala.Crim.App.1995).

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2. Lesser included offenses

Failure to keep records of prescriptions is lesser included offense of unlawful sale of controlled substances without prescription. The one element separating the two offenses is authorization by a prescribing physician to sell the controlled substance. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

3. -- Jury instructions

Failure to charge jury on lesser included offense. In prosecution for unlawful sale of controlled substances without a prescription, where there was evidence offered which could establish that the pharmacist had oral prescriptions before dispensing the drugs, but failed to properly document them, the trial court erred in refusing to charge jury on lesser included offense of failure to keep records of prescriptions. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

4. Evidence

Evidence sufficient to raise question of fact for jury. Where the residence in which the drugs were found was that of the defendant, his wife and child, and no one else lived there, two officers testified that they saw the defendant grab up some trash and start out the door with same, one officer testified he heard a "whirring" or "fluttering" sound and saw the defendant's arm make a motion, then heard a "thud" of something which apparently struck the roof just outside, three officers stated they saw a brown paper bag sitting on top of the roof in the rain, and when it was retrieved it was damp on top, but the bottom was dry, and all of the controlled substances were inside the brown paper bag which the officers saw on the roof of the defendant's porch, and this was immediately after the defendant went outside to throw out some trash; such evidence raised a question of fact for the jury as to

defendant's knowledge of the presence of the controlled substances at his residence and was sufficient to sustain his conviction. *Green v. State*, 384 So.2d 1215 (Ala.Crim.App.1980).

5. -- Admissibility

Where one or more controlled substances were contained within the same bag or pouch, such were relevant evidence as being part of the same transaction, and such items were properly admitted as showing the "complete story" as to the various drugs and paraphernalia found at the home. *Green v. State*, 384 So.2d 1215 (Ala.Crim.App.1980).

Cited in *Hill v. State*, 348 So.2d 848 (Ala.Crim.App.1977), cert. denied 348 So.2d 857 (Ala.); *Chesteen v. State*, 365 So.2d 102 (Ala.Crim.App.1978), cert. quashed 365 So.2d 108 (Ala.).

§ 20-2-72. Prohibited acts C. [AL ST SEC 20-2-72]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations

(a) It is unlawful for any person:

(1) To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by Section 20-2-57;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from any application, report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter; or

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a Class B felony, except that any person who violates subdivision (a)(3) of this section is guilty of a Class C felony.

(Acts 1971, No. 1407, p. 2378, § 403; Acts 1987, No. 87-603, p. 1047, § 7.)

ANNOTATIONS

CASENOTES

Cited in *Hill v. State*, 348 So.2d 848 (Ala.Crim.App.1977), cert. denied 348 So.2d 857 (Ala.).

§ 20-2-73. Transferred to § 13A-12-215 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-73]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-74. Prescription, administration, etc., of controlled substances by practitioners of veterinary medicine for use of human beings or by practitioners of dentistry for persons not under treatment in regular practice of profession. [AL ST SEC 20-2-74]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Annotations


(a) It shall be unlawful for any practitioner of dentistry to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for any person not under his treatment in his regular practice of his profession or for any practitioner of veterinary medicine to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for the use of human beings; provided, however, that the provisions of this section shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of substances enumerated in schedules I through V who is under his professional care such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of maintaining addiction or abuse.

(b) Any person who violates this section shall be guilty of a Class B felony.
(Acts 1971, No. 1407, p. 2378, § 505; Acts 1987, No. 87-603, p. 1047, § 9.)


ANNOTATIONS

CASENOTES

1. Constitutionality

This section is constitutional. Statute which in its simplest form states that it is unlawful for dentist to prescribe certain drugs to person not his patient or for veterinarian to prescribe certain drugs for human use is constitutional in its application to those persons coming within its purview, dentist and veterinarians, but attempt by state to enforce it against licensed physician, to whom it did not apply, was unconstitutional. *State v. Bradford*, 368 So.2d 317 (Ala.Crim.App.1979). Controlled Substances  6

2. Applicability

Does not apply to licensed physicians. Statute which states that it shall be unlawful for a dentist to prescribe certain drugs to a person not his patient, or for veterinarian to prescribe certain drugs for human use, and which nowhere states that it shall be unlawful for a practitioner of medicine to do anything, although limitation adding that it shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user such substances as are deemed necessary for user's treatment does not apply to physicians, regardless of whether or not they act in good faith. *State v. Bradford*, 368 So.2d 317 (Ala.Crim.App.1979). Controlled Substances  45

Cited in *Bentley v. State*, 450 So.2d 197 (Ala.Crim.App.1984).

§ 20-2-75. Repealed by Acts 1986, No. 86-425, § 4, effective April 29, 1986. [AL ST SEC 20-2-75]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-75.1. Transferred to § 13A-12-260 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-75.1]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-76. Penalties for second or subsequent offenses; when offense deemed second or subsequent offense. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. [AL ST SEC 20-2-76]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-77. Conviction or acquittal under federal law or state law to bar prosecution for same violation under chapter. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. [AL ST SEC 20-2-77]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§ 20-2-78. Penalties imposed for violations of chapter in addition to other civil or administrative penalties or sanctions. [AL ST SEC 20-2-78]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law.
(Acts 1971, No. 1407, p. 2378, § 404.)

§ 20-2-79. Transferred to § 13A-12-250 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-79]

Current through End of 2003 Organizational, Regular and 1st Special Session.

ARTICLE 4A. TRAFFICKING IN ILLEGAL DRUGS.

§§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess. No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-80]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess. No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-81]

Current through End of 2003 Organizational, Regular and 1st Special Session.

ARTICLE 5. ENFORCEMENT.

ANNOTATIONS


CASENOTES

Cited in Jones v. State, 432 So.2d 19 (Ala.Crim.App.1983).

Burden of proof 2 enter p


Prima facie case 1 enter p

1. Prima facie case

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001). Controlled Substances  184

2. Burden of proof

State seeking civil forfeiture of currency had the burden of proving that the currency was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a

violation of any law of this state concerning controlled substances. *Harris v. State*, 821 So.2d 177 (Ala.2001).
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§ 20-2-90. State Board of Pharmacy, Department of Public Safety, etc., to enforce chapter; drug inspectors to meet minimum standards. [AL ST SEC 20-2-90]

Current through End of 2003 Organizational, Regular and 1st Special Session.

[Historical Notes](#) [Annotations](#)

(a) The State Board of Pharmacy and its drug inspectors shall enforce all provisions of this chapter. The agents and officers of this Department of Public Safety, the drug and narcotic agents and inspectors of the State Board of Health, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and all peace officers of the state and all prosecuting attorneys are also charged with the enforcement of this chapter. The agents and officers of the Department of Public Safety, the drug inspectors of the State Board of Pharmacy, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and the drug and narcotic agents and inspectors of the State Board of Health shall have the powers of peace officers in the performance of their duties to:

(1) Make arrests without warrant for any offense under this chapter committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.

(2) Make seizures of property pursuant to this chapter.

(3) Carry firearms in the performance of their official duties.

(b) In addition to the requirements of subsection (a), drug inspectors of the State Board of Pharmacy shall, beginning October 1, 1993, meet the minimum standards required of peace officers in this state.

(Acts 1971, No. 1407, p. 2378, § 501; Acts 1981, No. 81-657, p. 1073; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-671, p. 1209, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993 amendment, effective May 17, 1993, added the (a) designator to the first paragraph; in subsection (a), in the first sentence, deleted "It shall be the duty of" at the beginning of the sentence and substituted "shall enforce" for "to enforce"; and added subsection (b).

ANNOTATIONS

CASENOTES

1. Generally

Phrase "make seizures of property" contained in this section does not authorize ABC agents to execute search warrants by themselves. Instead, in accordance with §§ 15-5-5 and 15-5-7, a search warrant, to be legal, must be executed by or at the direction of county officials. At this point, a seizure of property pursuant to the search is authorized by this section. *Rivers v. State*, 406 So.2d 1021 (Ala.Crim.App.1981), writ denied 406 So.2d 1023.

Cited in *Sexton v. State*, 349 So.2d 126 (Ala.Crim.App.1977).

§ 20-2-91. Inspection of stocks of controlled substances and prescriptions, orders, etc., required by chapter; disclosure of information as to prescriptions, orders, etc., by enforcement personnel. [AL ST SEC 20-2-91]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

(a) Prescriptions, orders and records required by this chapter and stocks of controlled substances enumerated in schedules I, II, III, IV and V shall be open for inspection only to federal, state, county and municipal officers, the investigators of the board of dental examiners, and the agents and officers of the department of public safety whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(b) No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

(Acts 1971, No. 1407, p. 2378, § 502; Acts 1987, No. 87-578, p. 923, § 1.)

REFERENCES

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics § 25.

§ 20-2-92. Injunctions. [AL ST SEC 20-2-92]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

(a) The circuit courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or temporary restraining order under this section.

(Acts 1971, No. 1407, p. 2378, § 503.)

REFERENCES

CROSS REFERENCES

As to rules of supreme court relative to injunctions, see A.R.C.P.,.

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics § 69.

§ 20-2-93. Forfeitures; seizures. [AL ST SEC 20-2-93]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes References Annotations

(a) The following are subject to forfeiture:

(1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;

(3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds

traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it;

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and

(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled

substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence. (Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 18, 1990, in subdivision (e)(2), substituted "law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of" for "and/or county, and/or state general fund" in the second sentence, and added the last sentence.

Code Commissioner's Notes:

Acts 1988, No. 88-651, § 1 provides: "This act shall be entitled 'The Drug Profits Forfeiture Act of 1988.'"

REFERENCES

LIBRARY REFERENCES

Corpus Juris Secundum:

28 C.J.S., Drugs & Narcotics §§ 138-141.

RESEARCH REFERENCES

ALR Library

104 ALR 5th 229, Burden Of Proof And Presumptions In Tracing Currency, Bank Account, Or Cash Equivalent To Illegal Drug Trafficking So As To Permit Forfeiture, Or Declaration As Contraband, Under State Law.

1 ALR 5th 317, Effect Of Forfeiture Proceedings Under Uniform Controlled Substances Act Or Similar Statute On Lien Against Property Subject To Forfeiture.

1 ALR 5th 346, Forfeitability Of Property, Under Uniform Controlled Substances Act Or Similar Statute, Where Property Or Evidence Supporting Forfeiture Was Illegally Seized.

6 ALR 5th 652, Forfeitability Of Property Under Uniform Controlled Substances Act Or Similar Statute Where Amount Of Controlled Substance Seized Is Small.

6 ALR 5th 711, Delay In Setting Hearing Date Or In Holding Hearing As Affecting Forfeitability Under Uniform Controlled Substances Act Or Similar Statute.

ANNOTATIONS

CASENOTES

- I. In General..... enter p
II. Practice and Procedure..... enter p

I. IN GENERAL

Appeal and review 13.5 enter p

1. Generally

Requirement that forfeiture proceedings be promptly instituted is necessary to the constitutional exercise of the state's power to interfere with the property rights of its citizens by seizing their property without the possibility of its release by the giving of a bond. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002).

Forfeitures ☒ 5

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001). Controlled Substances ☒ 184

Action in rem. A civil forfeiture action is not an action in personam against the owner or claimant of the property; rather, it is an action in rem against the property itself. Agee v. State ex rel. Galanos, 627 So.2d 960 (Ala.Civ.App.1993). Forfeitures ☒ 5

Failure of state to establish prima facie case. If the state fails to present reasonably satisfying evidence that the property sought to be forfeited was derived from proceeds obtained from any violation of any law of the state concerning controlled substances, the forfeiture proceeding must fail. Agee v. State ex rel. Galanos, 627 So.2d 960 (Ala.Civ.App.1993). Controlled Substances ☒ 184

There is no statute or rule of court which establishes the procedure for court proceedings for condemnation of property seized subject to forfeiture. First National Bank of Columbiana v. State, 403 So.2d 258 (Ala.Civ.App.1981).

Judicial proceedings required in all forfeiture actions. Judicial proceedings are required constitutionally in all forfeiture actions initiated pursuant to this section. Kirkland v. State ex rel. Baxley, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The legislative intent, as manifested by a joint reading of subsections (c) and (d), was to require judicial proceedings in all forfeiture proceedings under this section, even though subsection (d) does not expressly state the requirement. Kirkland v. State ex rel. Baxley, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

Section was patterned after proposed Uniform Controlled Substances Act recommended by the National Conference of Commissioners on Uniform State Laws. Reeder v. State ex rel. Myers, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

2. Constitutionality

Statutory mandate that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002). Forfeitures ☒ 5

Constitutional protection. Statutes authorizing confiscation and forfeiture obviously carry serious implications for rights guaranteed by the federal and state constitutions. Woods v. Reeves, 628 So.2d 563 (Ala.1993).

The necessity of prompt action to adjudicate the merits of the seizure and to effectuate the forfeiture is what is constitutionally required. Woods v. Reeves, 628 So.2d 563 (Ala.1993).

Guilt or innocence of property's owner is constitutionally irrelevant. In a civil forfeiture action, because the state is proceeding against the "offending" property, the guilt or innocence of the property's owner is constitutionally irrelevant. Agee v. State ex rel. Galanos, 627 So.2d 960 (Ala.Civ.App.1993).

Constitutionality of statute hinges on promptness requirement. The constitutionality of the forfeiture statute hinges on the state's adherence to the mandate that all forfeiture proceedings be instituted promptly. Adams v. State ex rel. Whetstone, 598 So.2d 967 (Ala.Civ.App.1992).

The mandate in the statute that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. Reach v. State, 530 So.2d 40 (Ala.1988).

Constitutionality of section. This section is constitutional even though it permits the deprivation of property without a prior hearing. Kirkland v. State ex rel. Baxley, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The interruption of the individual's dominion over his property under this section pending the prompt initiation

of judicial proceedings to determine the propriety of the seizure does not constitute an unreasonable deprivation of property forbidden by the Constitution. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The want of a bond provision in this section does not render it constitutionally defective so long as it provides interested parties the right to a prompt hearing. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

3. Purpose

The forfeiture provisions are clearly intended to be a deterrent to illegal drug dealing, and to aid the objectives of criminal law enforcement. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981).

4. Applicability

Defendant cannot defeat the intent of the forfeiture statute by having the cocaine on his person rather than on the seat beside him. *State v. Pudzis*, 507 So.2d 531 (Ala.Civ.App.1987).

This section addresses the forfeiture of two specific types of conveyances, viz., those conveyances "used" in the transportation of a controlled substance and those conveyances "intended for use." *Singleton v. State*, 396 So.2d 1050 (Ala.1981).

Money does not fall within any of the categories of forfeiture. *Jackson v. Evans*, 379 So.2d 1236 (Ala.1979).

5. Construction

Statutes authorizing condemnation and forfeiture of property must be strictly construed. *Jackson v. Evans*, 379 So.2d 1236 (Ala.1979); *State v. Blair*, 435 So.2d 124 (Ala.Civ.App.1983).

Strict construction. Statutes which authorize condemnation and forfeiture of property are highly penal in nature and must be strictly construed. *Reeder v. State*, 294 Ala. 260, 314 So.2d 853 (1975) (superseded by statute on other grounds as stated in \$10,000 U.S. Currency in Possession of Bruce v. State, 598 So.2d 979 (Ala. Civ. App.)); *Cumbe v. State*, 515 So.2d 973 (Ala.Civ.App.1987).

Bare filing of a complaint seeking forfeiture, while a necessary component of instituting a forfeiture proceeding, does not alone constitute institution of such a proceeding. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002). Forfeitures ☐ 5

Under test formulated by United States Supreme Court for determining whether forfeiture action, notwithstanding legislature's expressed intent, amounts to criminally punitive sanction for double jeopardy purposes, court first must consider legislative intent, and if it appears that forfeiture statute is intended to be solely remedial civil action, then inquiry must proceed and court must analyze whether effect of forfeiture scheme is so extreme as to make sanction punitive, regardless of remedial intent; party claiming that double jeopardy violation has occurred must establish by clearest proof that forfeiture sanction was so severe that it transformed what was clearly intended as civil remedy into criminal penalty. *Wilhite v. State*, 689 So.2d 221 (Ala.Crim.App.1996), rehearing denied, certiorari denied. Double Jeopardy ☐ 25

Forfeiture statute is penal in nature and, therefore, must be strictly construed. *Williams v. State*, 674 So.2d 591 (Ala.Civ.App.1995), rehearing denied, certiorari denied. Forfeitures ☐ 2

Strict construction is required concerning statute concerned with controlled substance offense, since it is penal in nature. *Grant v. State*, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied, certiorari quashed as improvidently granted 668 So.2d 23.



This section is penal in nature and must be strictly construed. *Wherry v. State ex rel. Brooks*, 637 So.2d 890 (Ala.Civ.App.1994). Forfeitures ☐ 1; Forfeitures ☐ 2

This section authorizes condemnation and forfeiture. Forfeiture statute is penal in nature and must be strictly construed. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993). Forfeitures ☐ 1; Forfeitures ☐ 2

This statute is penal in nature and therefore should be strictly construed. *State ex rel. Valeska v. Keener*, 606 So.2d 150 (Ala.Civ.App.1992), certiorari denied. Forfeitures ☐ 1; Forfeitures ☐ 2

The forfeiture statute is highly penal in nature and must be strictly construed. \$10,000 U.S. Currency in Possession of Bruce v. State, 598 So.2d 979 (Ala.Civ.App.1992). Forfeitures ☐ 1; Forfeitures ☐ 2

When the state seeks to seize, condemn, and forfeit property under this section, the section must be strictly construed, and the state must establish by the evidence a prima facie case; the standard of proof is reasonable

satisfaction. *Miller v. State*, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied. Forfeitures  2; Forfeitures  5

This section authorizes condemnation and forfeiture and thus is highly penal in nature and must be strictly construed. *State v. Bilotta*, 522 So.2d 300 (Ala.Civ.App.1988).

A statute authorizing the seizure, forfeiture, and condemnation is extremely penal in nature and as such, should be strictly construed. *Felder v. State*, 515 So.2d 17 (Ala.Civ.App.1987).

This section must be strictly construed since it authorizes the condemnation and forfeiture of money or other property. \$3,976.00 U.S. Currency in Possession of Glen F. Sasser v. *State*, 484 So.2d 1088 (Ala.Civ.App.1985).


Forfeiture statutes, because of their penal nature, are subject to strict construction. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981).


Reference in subdivision (4) of subsection (a) of this section to property described in subdivisions (1) or (2) is to controlled substances. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

6. Relationship with other laws


Proceeding pursuant to § 32-8-86(h). The language of this section has no effect on the forfeiture of the automobile in proceedings instituted pursuant to § 32-8-86(h). *Glover v. State*, 553 So.2d 131 (Ala.Civ.App.1989).


Sections 28-4-285 and 28-4-290 compared. This section, unlike §§ 28-4-285 and 28-4-290, does not require reasonable diligence in inquiring as to the proposed use of the car or contain a provision that would impute notice of reputation as a matter of law. *Metropolitan Toyota, Inc. v. State ex rel. Galanos*, 496 So.2d 25 (Ala.1986).

In rem civil forfeitures under Drug Profits Forfeiture Act do not constitute punishment for purposes of Fifth Amendment's double jeopardy clause. *Money v. State*, 717 So.2d 38 (Ala.Crim.App.1997), rehearing denied, certiorari denied. Double Jeopardy  25

Although weapons found in stolen car were not subject to statutory condemnation, weapons were lost property and police department became owner of weapons pursuant to provision governing stolen property abandoned by thief at place unknown to owner; claimant, whose grandson allegedly stole the car from house of claimant's son, did not establish that he owned the weapons in condemnation action, and son did not file claim. *Frederick v. State*, 719 So.2d 233 (Ala.Civ.App.1998), rehearing denied, certiorari denied. Abandoned And Lost Property  10


7. "Promptly"

Forfeiture proceeding not instituted promptly is ineffectual. \$3,011 in U.S. Currency v. *State*, 2002 WL 734348 (Ala.Civ.App.2002). Forfeitures  5


What is "prompt," for purposes of a forfeiture proceeding, is decided on the facts of a given case, but a fairly short time frame, namely less than seven to 10 months, is evident. \$3,011 in U.S. Currency v. *State*, 2002 WL 734348 (Ala.Civ.App.2002). Forfeitures  5

The term "promptly" has been construed to mean within a reasonable time in light of all the circumstances. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

The mandate in the statute that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

Forfeiture proceeding that is not instituted promptly is ineffectual. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992). Forfeitures  5


Reasonable period of time. There is no mathematical formula which can be used to determine what constitutes a reasonable period of time. What is a reasonable time for an act to be done depends upon the nature of the act to be done and all the circumstances relating to that act. *Glover v. State*, 553 So.2d 131 (Ala.Civ.App.1989).

It is required that forfeiture proceedings be instituted promptly. *Tucker v. State*, 445 So.2d 311 (Ala.Civ.App.1984). Forfeitures  5

Must be instituted promptly. The judicial proceedings required constitutionally in all forfeiture proceedings pursuant to this section must be instituted promptly. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

8. ---- Particular circumstances, "promptly"



Court of Civil Appeals was required to presume that trial court had adequate evidence to support its denial of movant's motion for relief from judgment wherein court declared currency contraband and forfeited currency to

state, where movant failed to include in record transcript of trial court's hearing on motion. *Heflin v. State*, 689 So.2d 163 (Ala.Civ.App.1996). Forfeitures  5

Failure to meet promptness requirement where owner's address not current. Trial court did not err when it dismissed the State's forfeiture petition on the grounds that the State failed to meet the promptness requirement of subsection (c) due to the delay caused by the State's failure to serve owner of seized currency properly. Owner's address, as stated in the petition, was not his current location, and the State was either aware of that fact or could have easily ascertained that fact. Therefore, the State did not have "intention of having process served," an ARCP, Rule 3 filing requirement, when it filed the forfeiture petition which listed an incorrect address for owner. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

Forfeiture proceedings instituted by the State twelve days after defendant's car was seized were "prompt" under this section. *Milstid v. State*, 634 So.2d 585 (Ala.Civ.App.1994).

The state has lost its right to a forfeiture where after more than four years has passed and no condemnation proceedings have been initiated. *Woods v. Reeves*, 628 So.2d 563 (Ala.1993).

Failure to meet promptness requirement was denial of due process. Civil forfeiture proceeding, which was instituted over seven months after the money was taken from criminal defendant's possession, did not meet the promptness requirement and deprived him of due process of law. *\$1,113.77 U.S. Currency v. State, Escambia County*, 606 So.2d 151 (Ala.Civ.App.1992), certiorari denied. Constitutional Law  303; Forfeitures  5

Forfeiture proceeding met promptness requirement. A forfeiture proceeding instituted four weeks after seizure meets the promptness requirement of the statute. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

Ten weeks should not be considered the time period within which to institute forfeiture proceedings; absent future legislative guidance, the facts and circumstances of each case may cause this issue to be decided on a case by case basis. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

Promptness requirement not met. A delay of ten weeks between the time of the seizure of the vehicle in this case and the institution of the forfeiture proceeding did not meet the promptness requirement of this section. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).


Defendant had no statutory duty to request the release of his vehicles since the statute places an affirmative duty on the state to institute a forfeiture proceeding promptly. *Reach v. State*, 530 So.2d 40 (Ala.1988).

Where the state instituted forfeiture proceeding approximately eight months after seizing defendant's vehicles, it denied defendant due process of law, since during those eight months, defendant had no way of knowing whether the seizure would eventually be upheld, he could not post a bond to obtain the temporary use of his vehicles pending a determination concerning the validity of the seizure, and his one demand of record that the vehicles be released was ineffectual. *Reach v. State*, 530 So.2d 40 (Ala.1988).

A forfeiture proceeding under this section instituted approximately four weeks after seizure meets the promptness requirement, but a proceeding brought after eight months does not. *Reach v. State*, 530 So.2d 40 (Ala.1988).

Proceedings instituted three and one-half weeks after seizure were prompt under this section. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Proceedings instituted approximately four weeks after seizure are permissible. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Proceedings instituted approximately three and one-half weeks after service are permissible. *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209. Forfeitures  5


9. "Sale" or "Receipt"

As to the meaning of the phrase "for the purpose of sale or receipt," see *Reeder v. State*, 294 Ala. 260, 314 So.2d 853 (1975) (superseded by statute on other grounds as stated in *\$10,000 U.S. Currency in Possession of Bruce v. State*, 598 So.2d 979 (Ala. Civ. App.)); *State ex rel. Williams v. One Glastron Boat*, 411 So.2d 795 (Ala.Civ.App.1982).

"Receipt," as it is used in drug forfeiture statutes, has been defined as "receiving for the purpose of sale or in some way to facilitate the sale of drugs; it does not mean possession merely." *Miller v. State*, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied.


"Receipt" as used in this section means receiving for the purpose of sale. It does not mean mere possession. *State ex rel. Williams v. One Glastron Boat*, 411 So.2d 795 (Ala.Civ.App.1982).


Receipt does not mean possession merely. *Reeder v. State ex rel. Myers*, 294 Ala. 260, 314 So.2d 853 (Ala.1975).


Where the express inclusion of a specific act or acts, here "sale or receipt," evidences an intent to exclude those acts not so carried over from a preexisting statute, here "possession," no attempt should be made to read into the new statute such acts. *Reeder v. State ex rel. Myers*, 294 Ala. 260, 314 So.2d 853 (Ala.1975). Controlled Substances  169

Receipt means receiving for purpose of sale or in some way to facilitate sale of drugs. *Reeder v. State ex rel. Myers*, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

10. Rights of lienholders


Pawnshop was not a bona fide owner, but only a lienholder and, thus, was not entitled to automobile under forfeiture statute on date that it was seized by State; although maturity date of pawn had passed at time of seizure, pawnshop's right to vehicle's title did not vest until eight days after seizure. *State ex rel. Morgan v. Thompson*, 791 So.2d 977 (Ala.Civ.App.2001). Controlled Substances  175

Evidence established father's status as "secured party" within meaning of § 7-9-105(1)(m), and thus his status as "bona fide lienholder" whose interest in vehicle was not subject to forfeiture following son's arrest for drug offense; agreement executed by father and son indicated that father was first lienholder, and son's testimony indicated that parties intended that father have interest in vehicle that secured son's payment of loan to father; moreover, father perfected his security interest in accordance with statute. *Jester v. State*, 668 So.2d 822 (Ala.Civ.App.1995). Controlled Substances  175

For purposes of this section, "bona fide lienholder" is one who, before seizure, had actual, good faith interest in property not derived by fraud or deceit and one who had no actual or constructive knowledge of intended illegal use of property. *Jester v. State*, 668 So.2d 822 (Ala.Civ.App.1995). Controlled Substances  175

Section protects bona fide lienholders. The clear language of this section evidences a legislative intent to protect bona fide lienholders without destroying the right of the state to condemn a vehicle used in violation of the Controlled Substances Act. *Singleton v. State*, 396 So.2d 1050 (Ala.1981).

11. Knowledge

Owner was entitled to return of vehicle seized while in possession of stepson, where owner did not have knowledge of nor gave consent to commission of any act or omission subjecting property to forfeiture. *State v. Sweatt*, 668 So.2d 18 (Ala.Civ.App.1994), rehearing denied. Forfeitures  9

Owners or lienholders as to certain property may prevail in forfeiture proceedings if they prove that the act was committed without their knowledge and that they could not have obtained that knowledge by the exercise of reasonable diligence so as to have prevented the illegal use. *Culpepper v. State*, 587 So.2d 359 (Ala.Civ.App.1991).

Wife could have obtained knowledge of illegal use through reasonable diligence. Evidence supported the trial court's finding that wife could have obtained knowledge of husband's illegal use of automobile had she exercised reasonable diligence; the evidence at trial revealed that the wife had known for over seven years that the husband smoked marijuana; she knew that he kept marijuana in their home; she also knew that people would come to their home, but never come in; furthermore, the wife testified that she knew that the husband was getting marijuana from somewhere, but never inquired into his source and never asked if he was selling marijuana. *Edwards v. State*, 550 So.2d 1035 (Ala.Civ.App.1989).

No conveyance is subject to forfeiture under this section by reason of any act or omission committed without the knowledge or consent of the owner. However, where the person to whom such conveyance is made is known to the community and law enforcement officials as a criminal offender, forfeiture is justified. *Pugh v. State ex rel. Galanos*, 441 So.2d 931 (Ala.Civ.App.1983).

Lack of knowledge or consent is an affirmative defense, available after the state has made a prima facie case for forfeiture by showing that the vehicle in question was used or intended for use in the transportation of a controlled substance for the purpose of sale or receipt. The issue of knowledge or consent is therefore irrelevant until the state proves a "purpose of sale or receipt." *State ex rel. Williams v. One Glastron Boat*, 411 So.2d 795 (Ala.Civ.App.1982).

This section is not so penal as to provide for forfeiture of property used in the commission of a crime regardless of the innocence of the owner or lienholder. Thus, it is recognized that a lienholder has an interest in the property sought to be forfeited to the state. *First National Bank of Columbiana v. State*, 403 So.2d 258 (Ala.Civ.App.1981).

12. Ownership

Certificate of title. In forfeiture action, a certificate of title to an automobile is only prima facie evidence of ownership, which can be contradicted by other evidence. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

Evidence sufficient to support defendant as vehicle owner. In a proceeding pursuant to this section where the defendant admitted that the defendant's mother "sold" the automobile to him for \$500, but contended that only \$200 was ever paid to the defendant's mother and that he thus "abandoned his contract" and the defendant's mother still owns the vehicle and that title to the vehicle was in the defendant's mother's name and that title was never transferred from the defendant's mother to the defendant pursuant to § 32-8-44, the undisputed fact of a "sale" of the vehicle to the defendant, his control and dominion of the vehicle on at least two occasions to make illicit controlled substance transactions, and the lack of any evidence to support the contention that he was not the owner of the automobile was sufficient to support the trial court's finding that the defendant was the owner of the automobile. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Ownership of seized vehicle can be inferentially established in the defendant, as by evidence that the vehicle was a gift to the defendant from his mother or that the defendant exerted virtually complete dominion and control over the vehicle. *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209.

13. Miscellaneous

Forfeiture due to illegal drug activity is penal in nature. The forfeiture of a debtor's home due to illegal drug activity is penal in nature, and is meant to punish the wrongdoer. *Matter of Smith*, 176 B.R. 221 (Bkrcty.N.D.Ala.1995).

The plaintiff may not assert a homestead exemption against the property that is subject to the state court forfeiture action. *Matter of Smith*, 176 B.R. 221 (Bkrcty.N.D.Ala.1995).


Supreme Court could not determine whether civil forfeiture of truck was grossly disproportionate to gravity of alleged offense of possession of controlled substance, and thus, whether forfeiture violated excessive fines clause, requiring remand, where there was no evidence indicating truck's value, amount of controlled substance seized from truck, or criminal charge, if any, made against defendant. *Dorough, Ex Parte*, 773 So.2d 1001 (Ala.2000).

Controlled Substances  186

Where forfeiture action for items seized was not promptly instituted in state court after it was apparent that federal forfeiture action was not forthcoming, investigator had not authority to retain custody of seized items and was not entitled to qualified immunity from claim of conversion. *Lightfoot v. Floyd*, 667 So.2d 56 (Ala.1995).

Use of vehicle pending a hearing. This section contains no provision whereby the owner of a seized vehicle may post a bond and secure the use of his vehicle pending a hearing on the merits concerning the seizure. *Reach v. State*, 530 So.2d 40 (Ala.1988).

13.5. Appeal and review

Appellate court could review issue of whether state failed to promptly initiate forfeiture proceedings, even though owner of currency in controversy accepted personal service, where owner sought judgment on basis that state did not comply with statutory requirement that forfeiture proceedings be promptly instituted, trial court denied motion before it heard evidence at ore tenus hearing, and trial court's adverse ruling on motion was "order" or "ruling" as to which owner could seek review on appeal from final judgment of forfeiture. \$3,011 in U.S. Currency *v. State*, 2002 WL 734348 (Ala.Civ.App.2002). Forfeitures  5

II. PRACTICE AND PROCEDURE

14. Notice

Notice was insufficient. In a case where seized currency was found in hotel room and owner was arrested on drug related charges, and where the trial court issued an order and directed the clerk of the court to give notice in some newspaper published in county once a week for three consecutive weeks, the notice was insufficient and was not reasonably calculated to apprise owner of money of the pending forfeiture action and, as such, violated owner's due process rights. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

State's failure to personally serve vehicle owner with notice. The State's failure to personally serve known owner of vehicle subject to condemnation with notice of the condemnation did not void the condemnation. *Hodge*

v. State, 643 So.2d 982 (Ala.Civ.App.1993).

15. Hearing

Hearing, held less than seven months after the timely filing of the petition for forfeiture, did not violate defendant's due process rights. *Milstid v. State*, 634 So.2d 585 (Ala.Civ.App.1994). Constitutional Law ☒ 303; Controlled Substances ☒ 182

Subsection (c) does not provide for any date when hearings on petitions for forfeiture are to be held; rather, the section requires that proceedings be instituted promptly. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Where defendant made no motion for speedy hearing. Where the record did not contain any motion by the defendant for a speedy hearing or any other attempt whatsoever to have the hearing prosecuted, hearing held eight months from the date of the filing of the petition seeking forfeiture did not violate the defendant's due process. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

16. Parties

City suffered no injury to a legally protected right and, thus, lacked standing to bring action for forfeiture of property used or intended to be used in connection with drug offense, where statute provided that such an action was to be filed by the state and did not give city right to prosecute or to begin such an action. *State v. Property at 2018 Rainbow Drive known as Oasis*, 740 So.2d 1025 (Ala.1999). Controlled Substances ☒ 180

Registered owner of vehicle was real party in interest. Registered owner of vehicle, which was in the possession of juvenile at the time of its seizure, was the real party in interest and was denied an opportunity to make the statutory showing under subsection (h) because he was not made a party to the action. *Hodge v. State*, 643 So.2d 982 (Ala.Civ.App.1993).

17. Burden of proof; prima facie case

Standard of proof required under this section is reasonable satisfaction. *State v. Walker*, 503 So.2d 866 (Ala.Civ.App.1987) (superseded by statute on other grounds as stated in \$10,000 U.S. Currency in Possession of *Bruce v. State*, 598 So.2d 979 (Ala. Civ. App.)); \$1,568.00 U.S. Currency v. *State*, 612 So.2d 497 (Ala.Civ.App.1992).

State failed to establish prima facie case for forfeiture of currency found in motorist's vehicle in proximity to small quantity of prescription painkillers and marijuana, following motorist's traffic stop and arrest for driving under influence of alcohol, where drugs were in small quantity, drugs were not packaged for sale, no paraphernalia indicating sale was found with drugs, motorist's explanation for large quantity of cash, that is, that he had recently cashed paychecks and sold pick-up truck for cash, was credible, motorist was gainfully employed, and motorist's brother-in-law, who often borrowed motorist's vehicle, had prescription for pills found in vehicle. *Gatlin v. State*, 2002 WL 1822113 (Ala.Civ.App.2002). Controlled Substances ☒ 171


In a civil forfeiture proceeding, the state may establish a prima facie case by showing that the item to be forfeited was used, or intended to be used, in violation of the Uniform Controlled Substances Act. *Harris v. State*, 821 So.2d 177 (Ala.2001). Controlled Substances ☒ 169


State seeking civil forfeiture of currency had the burden of proving that the currency was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. *Harris v. State*, 821 So.2d 177 (Ala.2001). Controlled Substances ☒ 165


In order to make a prima facie showing that property in form of currency is due to be confiscated pursuant to state forfeiture statute, the State must prove that the currency seized was: (1) furnished or intended to be furnished by claimant in exchange for a controlled substance; (2) traceable to such a transaction; or (3) used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. *Hillegass v. State*, 795 So.2d 749 (Ala.Civ.App.2001). Controlled Substances ☒ 169

In order for property to be seized, condemned and forfeited as being used to facilitate controlled substance offense, state must establish prima facie case by reasonably satisfying evidence. *Grant v. State*, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied, certiorari quashed as improvidently granted 668 So.2d 23. Controlled Substances ☒ 184

Amendment not meant to change proof standard. While the legislature eliminated the necessity of an affirmative finding by the trier of fact in its 1988 amendment of this section, it did not intend to change the burden of proof. Absent legislative action requiring a greater burden of proof, therefore, the state must establish by the evidence a prima facie case for the forfeiture of the property, and the standard of proof is reasonable satisfaction. *Wherry v. State ex rel. Brooks*, 637 So.2d 1353 (Ala.Civ.App.1994).

To properly seize, condemn, and submit property to forfeiture pursuant to this section, the state must first make a prima facie case, and the requisite burden of proof is to the trial court's reasonable satisfaction. *Wherry v. State ex rel. Brooks*, 637 So.2d 890 (Ala.Civ.App.1994). Forfeitures  5

State must establish by the evidence a prima facie case for the forfeiture of property; the standard of that prima facie proof is reasonable satisfaction. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993). Forfeitures  5

State's burden of proof. In a forfeiture case, the state had the burden of proving that the currency seized was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. \$1,568.00 U.S. Currency v. *State*, 612 So.2d 497 (Ala.Civ.App.1992). Controlled Substances  169

In forfeiture and seizure proceedings pursuant to this section, the state may establish a prima facie case by showing that the items in question were used or intended to be used in violation of the Alabama Uniform Controlled Substances Act. *Culpepper v. State*, 587 So.2d 359 (Ala.Civ.App.1991).

Prima facie case required, etc. Under this section the state must establish a prima facie case for the seizure, condemnation, and forfeiture of the property. The standard of proof is reasonable satisfaction. *State v. Smith*, 578 So.2d 1374 (Ala.Civ.App.1991).


The state is required to establish by the evidence a prima facie case for the seizure, condemnation, and forfeiture of property, under this section, and that standard of proof is reasonable satisfaction; before an order of condemnation could have been rendered and entered, the trial court must have been reasonably satisfied from the evidence that the items in question, an automobile and the currency, were used, or were intended to be used, in a transaction which would be a violation of the Alabama Uniform Controlled Substances Act. *Moynes v. State*, 555 So.2d 1086 (Ala.Civ.App.1989), certiorari denied.

The state must establish a prima facie case before it can properly seize and condemn property pursuant to this section. In order to establish a prima facie case, the state must establish by reasonable satisfaction the following two elements: (1) that the defendant was found in the act of selling or receiving or attempting to sell or receive a controlled substance and (2) that money was used or intended for use in a transaction which would be in violation of the Alabama Controlled Substances Act. \$9,886.00 U.S. Currency v. *State*, 541 So.2d 27 (Ala.Civ.App.1989).

Evidence must link substance to sale or receipt of substance. It takes more than just the existence of small amounts of a controlled substance to condemn under this statute, since there needs to be evidence linking the substance to a sale or receipt of that substance. *Felder v. State*, 515 So.2d 17 (Ala.Civ.App.1987).

To properly seize, condemn, and submit property to forfeiture pursuant to this section, the state must first establish a prima facie case. Further, the state is required to establish by reasonable satisfaction each element of the statute. *Hayden v. State ex rel. Galanos*, 513 So.2d 638 (Ala.Civ.App.1987).

Prima facie case required for seizure, condemnation, and forfeiture of property. The state is required to establish by the evidence a prima facie case for the seizure, condemnation, and forfeiture of property under this section. *State v. Walker*, 503 So.2d 866 (Ala.Civ.App.1987).

The state must establish a prima facie case for the seizure, condemnation and forfeiture of property under this section. After the prima facie case is established, it is incumbent upon any claimants to show that they had no knowledge or notice of the intended illegal use and could not have obtained knowledge by reasonable diligence. *Pickron v. State ex rel. Johnston*, 443 So.2d 905 (Ala.1983). Controlled Substances  184

The standard of proof required under this section is reasonable satisfaction. *Pickron v. State ex rel. Johnston*, 443 So.2d 905 (Ala.1983).

When the state has met its burden of proving that a vehicle was used in violation of this section, it has established a prima facie case for the seizure, condemnation and forfeiture of the vehicle. *Singleton v. State*, 396 So.2d 1050 (Ala.1981).

Prima facie case by state. It is the law of Alabama that once the state makes out a prima facie case to show violation of this section, the seizure, condemnation, and forfeiture of the vehicle used is permitted. When that prima facie case is made, it becomes incumbent upon the claimants to show that they had no knowledge or notice of the illegal use proved, and could not by reasonable diligence have obtained knowledge of the intended illegal use so as

to prevent it. *Air Shipping Intern. v. State*, 392 So.2d 828 (Ala.1981).

When the question is whether the holder of the security interest is entitled to allowance of its claim, the burden is upon the intervener (1) to establish its superior claim and (2) that it had no knowledge or notice of the illegal use and could not by reasonable diligence have obtained notice of the intended illegal use so as to prevent such use. *Air Shipping Intern. v. State*, 392 So.2d 828 (Ala.1981).

State is not required to prove actual movement of the vehicle for this section to be operative. The state is only required to prove the controlled substance was loaded for movement. *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209.

In forfeiture proceeding, state may establish prima facie case by showing that item to be forfeited was used, or was intended to be used, in violation of Uniform Controlled Substances Act. *McCloud v. State*, 715 So.2d 230 (Ala.Civ.App.1998), rehearing denied, certiorari denied. Controlled Substances ☒ 169

18. Evidence

Ore tenus evidence was sufficient to find that all of the currency found in claimant's rented automobile was related to a violation of the Alabama Controlled Substances Act, and, thus was due to be confiscated pursuant to the forfeiture statute; controlled substances were found in the automobile, defendant's passenger told police that he and claimant had spent the weekend "delivering" the "Ecstasy" tablets and that only a portion of an original quantity of tablets remained in their possession, large quantities of currency were found in other areas of the automobile, and that, although claimant testified he had documentation to prove that \$12,000 in currency was derived from his business, he did not produce any receipts or other documentation at trial. *Hillegass v. State*, 795 So.2d 749 (Ala.Civ.App.2001). Controlled Substances ☒ 184

Finding that currency in driver's vehicle was used or intended for use in transaction in violation of Controlled Substances Act was contrary to great weight of evidence, and thus, currency was not subject to forfeiture, where, even though "quite a bit of marijuana stems and seeds" were found in vehicle, neither driver nor passengers was charged with drug possession, vehicle was returned to driver by police, and authorities were unable to trace currency to specific drug transaction. *Holloway v. State ex rel. Whetstone*, 772 So.2d 475 (Ala.Civ.App.2000). Controlled Substances ☒ 184

Where witness does not tell the truth. In forfeiture action, when a witness does not testify truthfully to a material fact, the trial court may disregard that witness's testimony altogether. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993). Forfeitures ☒ 5

Where there is conflicting ore tenus testimony, it is the duty of the trial court to resolve the conflict and to render a judgment accordingly. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993). Forfeitures ☒ 5

Exclusionary rule inapplicable in condemnation proceeding. The exclusionary rule expounded in *Hamlet v. State*, 574 So.2d 951 (Ala.Crim.App.1990), reh'g denied, without op. (Ala. Crim. App.), cert. denied (Ala.) is inapplicable in condemnation proceeding under this section. *McNeese v. State ex rel. Cramer*, 592 So.2d 615 (Ala.Civ.App.1992).

In automobile condemnation case involving alleged drug transactions, an inference could not be drawn from witness's testimony involving the alleged drug transaction since such an inference would be sufficient evidence for condemnation to show the use or intended use for sale or receipt. *Felder v. State*, 515 So.2d 17 (Ala.Civ.App.1987).

Equity will not sanction the forfeiture of property based upon evidence obtained in violation of fundamental constitutional rights. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981). Forfeitures ☒ 1

When evidence is obtained by an illegal search and seizure, it is properly excluded from a subsequent forfeiture proceeding. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981).

Statement civil defendant made to sheriff's deputies, in response to promise of leniency, regarding traveling to Miami to purchase marijuana was admissible as declaration against interest in forfeiture action brought against defendant pursuant to the Controlled Substances Act; rule of evidence applied in criminal cases to exclude defendant's statement made in response to promise of leniency did not apply in civil forfeiture cases. *Malholtra v. State*, 717 So.2d 425 (Ala.Civ.App.1998). Controlled Substances ☒ 184; Evidence ☒ 272

19. -- Sufficiency, evidence

Suspected drug dealer's possession of marijuana in vehicle formed sufficient basis to support forfeiture of vehicle under forfeitures and seizures statute; narcotics officers observed suspect driving vehicle and weaving in his lane, and, after stopping suspect and smelling odor of marijuana upon approaching vehicle, officers seized 4.74

grams of marijuana from suspect's person and vehicle. *State ex rel. Valeska v. Farrier*, 2003 WL 328953 (Ala.Civ.App.2003). Controlled Substances ☒ 171

Civil forfeiture of alleged drug dealer's expensive automobile was improper without evidence that the automobile was used in drug transactions, contained drugs when it was seized, had been used to transport a controlled substance, or had been purchased with the proceeds from any violation of any law concerning controlled substances. *Harris v. State*, 821 So.2d 177 (Ala.2001). Controlled Substances ☒ 165

State failed to present any evidence that automobile was used, or was intended to be used, in violation of Controlled Substances Act, as required to support forfeiture; no drugs were found in the automobile, and driver testified that while he intended to drive car home, he also intended to return cocaine to alleged "third party" prior to returning home. *Robbs v. State ex rel. Whetstone*, 674 So.2d 1301 (Ala.Civ.App.1995), rehearing denied, writ denied 674 So.2d 1304. Controlled Substances ☒ 184

Condemnation and forfeiture judgment against landowner's property for growing marijuana was supported by un rebutted evidence that landowner grew 45 marijuana plants, about half of which were being cultivated in garden on his property. *Pointer v. State*, 668 So.2d 41 (Ala.Civ.App.1995), rehearing denied, certiorari denied. Controlled Substances ☒ 184

Evidence that about one quarter of ounce of marijuana was found in landowner's house was insufficient to support condemnation and forfeiture of landowner's house, where marijuana was not packaged for sale and there was no evidence that landowner used house to store, sell, or distribute marijuana, or to prepare marijuana for sale. *Pointer v. State*, 668 So.2d 41 (Ala.Civ.App.1995), rehearing denied, certiorari denied. Controlled Substances ☒ 171

Evidence that bag containing .02 grams of marijuana was in rear storage compartment of automobile and that card in driver's wallet contained cocaine residue was insufficient to show that either driver or owner of car, who was driver's girlfriend, knew that drugs were in car, or that money in possession of driver was used in or intended to be used in drug transaction, as required for forfeiture of car and money. *Grant v. State*, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied, certiorari quashed as improvidently granted 668 So.2d 23. Controlled Substances ☒ 184

State met burden of proving that seized currency found in bag on front seat of automobile with baggies of cocaine and set of scales, had been used to violate Controlled Substances Act, despite contention that substance found in baggies was not proven to be cocaine, where seizing officer testified based on her experience and familiarity, substance was cocaine. *Johnson v. State*, 667 So.2d 105 (Ala.Civ.App.1995), rehearing denied, writ quashed as improvidently granted 667 So.2d 108.

State met its burden of showing that the currency seized was money "used or intended to be used to facilitate any violation of any law of this state concerning controlled substances." The large amount of cash found on defendant's person and in proximity to the cocaine and marijuana packaged as if for sale, together with the discovery of green marijuana in a quantity suggesting trafficking, could, and doubtless did, reasonably satisfy the finder of fact, hearing evidence presented ore tenus, that the currency seized was being used to facilitate the violation of laws concerning controlled substances. *Shepherd v. State*, 664 So.2d 238 (Ala.Civ.App.1995), rehearing dismissed, certiorari denied.

Forfeiture of automobile could not stand where drugs were seized in illegal search. Because the only evidence supporting the forfeiture was the illegally seized drugs, the forfeiture could not stand. *Williams v. State*, 659 So.2d 972 (Ala.Crim.App.1994).

State met its burden in condemnation and forfeiture of money and an automobile where defendant discarded bag containing 8 individual bags of crack cocaine, drug paraphernalia and money was found in the defendant's room or on his person and in his room, defendant was unemployed and had no visible means of support, and stated to investigators that he had been selling crack cocaine for approximately 3 1/2 months. *Vaughn v. State*, 655 So.2d 1039 (Ala.Civ.App.1995). Controlled Substances ☒ 171

Burden of proof met. The evidence was sufficient for the state to meet its burden of proving that the money it seized from the claimant's home was subject to forfeiture as money used or intended for use in facilitating a violation of a law concerning controlled substances. \$1,568.00 U.S. Currency v. State, 612 So.2d 497 (Ala.Civ.App.1992).

Defendant's van was properly forfeited to city, where two officers testified that they witnessed defendant's involvement in a drug transaction in a high drug-traffic area; defendant pleaded guilty to possessing marijuana that was in a belt pouch around his waist when he exited the van, and an additional substance believed to be marijuana was found in the van; and the officers testified that he admitted that he was in the vicinity to purchase or to try to purchase marihuana. *Simmons v. State*, 603 So.2d 1099 (Ala.Civ.App.1992).

In condemnation action under this section, in view of the definition of receipt and the strict construction that must apply to a forfeiture statute, the state failed to establish a prima facie case to support the trial court's determination to condemn the vehicle where no sale of drugs took place. *Miller v. State*, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied.

Evidence which showed only that defendant was coming out of a bathroom in which the toilet was running, there was a white powder residue around the toilet lid, and there was a razor blade in the toilet bowl, was insufficient to meet the requirement that defendant be found in the act of either selling or attempting to sell a controlled substance, and thus the state could not properly seize and condemn currency found in defendant's apartment. \$9,886.00 U.S. Currency v. State, 541 So.2d 27 (Ala.Civ.App.1989).

Condemnation and forfeiture of \$750 under this section would be affirmed where it could be reasonably inferred from the evidence that, immediately before the defendant was arrested, he had just sold marijuana for \$550 in marked bills and that he already possessed the \$750 at that time, and where the \$750 could have been kept on hand by defendant for the purpose of making change in drug sales, the \$750 and \$550 were intermingled, and the \$1,300 was hidden at an unusual and abnormal location upon defendant's person. *Houze v. State ex rel. Galanos*, 531 So.2d 916 (Ala.Civ.App.1988).

Vehicle subject to forfeiture. Vehicle owned by the defendant, used to effectuate the illegal sale of 2.5 grams of cocaine by transporting the defendant and his cocaine to the place where the sale was consummated, was subject to forfeiture under this section. *State v. Pudzis*, 507 So.2d 531 (Ala.Civ.App.1987).

Testimony of law enforcement officer was sufficient proof that plaintiff used his 1975 Thunderbird to transport a controlled substance for the purpose of the sale by him of that substance. Accordingly, the vehicle was subject to forfeiture under subdivision (a)(5) of this section. *Tucker v. State*, 445 So.2d 311 (Ala.Civ.App.1984).

Evidence that \$8,694 in cash, a pistol, two pagers and a cellular telephone were found in defendant's car and 4.73 grams of marijuana were found in a plastic bag in defendant's front pocket was insufficient to establish that drug transaction took place or that money was used in drug transaction, as required to support forfeiture of money. *Thompson v. State*, 715 So.2d 224 (Ala.Civ.App.1997), rehearing denied, certiorari denied. Controlled Substances

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20. Filing fee and costs

State was not required to pay filing fee in order to invoke jurisdiction of trial court; the state is liable for filing fees and court costs in condemnation cases only after a judgment has been rendered in favor of the state, and only where the statute under which the forfeiture is made specifies that the state is to pay such costs. This section provides for the payment of costs involved in seizure and forfeiture, including court costs, from the proceeds of the sale of the property. *Metcalf v. State ex rel. Johnson*, 562 So.2d 276 (Ala.Civ.App.1990).

21. Appointment of counsel

No entitlement to appointed counsel. Actions brought under this section are considered to be civil actions, and, as such claimant was not entitled to appointment of counsel as a matter of right. \$1,568.00 U.S. Currency v. State, 612 So.2d 497 (Ala.Civ.App.1992).

Cited in *Kendrick v. State*, 356 So.2d 1222 (Ala. Crim. App.1977); *Walker v. State*, 358 So.2d 800 (Ala. Crim. App.1978); *Carter v. State, Jefferson County*, 465 So.2d 1156 (Ala.Civ.App.1984); *State v. Johnston*, 565 So.2d 262 (Ala. Civ. App.1990) ; \$4,320.00 U.S. Currency in Possession of *Bulger v. State*, 567 So.2d 352 (Ala.Civ.App.1990), reh'g overruled (Ala. Civ. App.); *Robinson v. State*, 587 So.2d 418 (Ala. Civ. App.1991); *Bracey v. State*, 591 So.2d 95 (Ala. Civ. App.1991); *Winters v. State*, 652 So.2d 258 (Ala.1994).

ARTICLE 7. IMITATION CONTROLLED SUBSTANCES.

ANNOTATIONS

CASENOTES

Cited in *McCrary v. State*, 429 So. 2d 1121 (Ala. Crim. App. 1982), cert. denied 464 U.S. 91378 L. Ed. 2d 254104 S. Ct. 273.

§ 20-2-140. Short title. [AL ST SEC 20-2-140]

Current through End of 2003 Organizational, Regular and 1st Special Session.

This article shall be known and may be cited as the Imitation Controlled Substances Act.
(Acts 1982, No. 82-426, p. 670, § 1.)

§ 20-2-141. Definitions. [AL ST SEC 20-2-141]

Current through End of 2003 Organizational, Regular and 1st Special Session.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Controlled substance. A substance as defined in Section 20-2-2.

(2) Imitation controlled substance. A substance, other than a legend controlled drug, that is not a controlled substance, which by dosage unit appearance (including color, size, shape and markings), and by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In the cases where the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example as in the case of a powder or liquid), the court or authority concerned should consider, in addition to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

a. Statements made by the owner or anyone else in control of the substance concerning the nature of the substance, its use or effect.

b. Statements made to the recipient that the substance may be resold for an inordinate profit.

c. Whether the substance is packaged in a manner normally used for illicit controlled substances.

d. Evasive tactics or actions utilized by the owner or person in control of this substance to avoid detection by law enforcement authorities.

e. Prior convictions, if any, of an owner or anyone in control of the substance, under state or federal law related to controlled substances or fraud.

f. The proximity of the substances to controlled substances.

(3) Distribute. The actual, constructive or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

(4) Manufacture. The production, preparation, compounding, processing, encapsulating, packaging, or repackaging, labeling or relabeling of an imitation controlled substance.

(Acts 1982, No. 82-426, p. 670, § 2; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

§ 20-2-142. Legislative intent. [AL ST SEC 20-2-142]

Current through End of 2003 Organizational, Regular and 1st Special Session.

It is the intent of the Legislature to remove the merchandising of the "imitation controlled substance" or "lookalike drug" from the street corners, school yards, and campuses of our state, not to interfere with the legitimate distribution of "over the counter" formulations used for the treatment of illness dispensed or sold by licensed practitioners.

(Acts 1982, No. 82-426, p. 670, § 6.)

§ 20-2-143. Manufacture, distribution, possession, or advertisement of imitation controlled substances prohibited; penalties; immunity of certain persons from liability. [AL ST SEC 20-2-143]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) *Manufacture or distribution.* -- It is unlawful for any person to manufacture, distribute, or possess with intent to distribute or sell an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class A misdemeanor under Title 13A.

(b) *Distribution to a minor.* -- Any person 18 years of age or older who violates subsection (a) of this section by distributing or selling an imitation controlled substance to a person under 18 years of age shall be guilty of a Class C

felony under Title 13A.

(c) *Possession.* -- It is unlawful for any person to use or possess with intent to use, an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class C misdemeanor under Title 13A.

(d) *Advertisement.* -- It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution or sale of an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class B misdemeanor under Title 13A.

(e) *Immunity.* -- No civil or criminal liability shall be imposed by virtue of this article on any person registered under Chapter 2 of Title 20 who manufactures, distributes, or possesses a placebo, or investigational new drug in the course of professional practice or research.

(Acts 1982, No. 82-426, p. 670, § 3.)

§ 20-2-144. Exceptions. [AL ST SEC 20-2-144]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Nothing in this article shall apply to a noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

(Acts 1982, No. 82-426, p. 670, § 7.)

ARTICLE 8. SOLICITATION, ATTEMPT AND CONSPIRACY TO COMMIT CONTROLLED SUBSTANCE CRIME.

§§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-160]

Current through End of 2003 Organizational, Regular and 1st Special Session.

§§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-164]

Current through End of 2003 Organizational, Regular and 1st Special Session.

ARTICLE 9. PRECURSOR CHEMICALS.

§ 20-2-180. Definitions. [AL ST SEC 20-2-180]

Current through End of 2003 Organizational, Regular and 1st Special Session.

Historical Notes

As used in this article and unless otherwise specified, the following terms are defined as follows:

(1) Board or Board of Pharmacy. The Alabama State Board of Pharmacy.

(2) Listed precursor chemical. A chemical substance specifically designated as such by the Alabama State Board of Pharmacy, that, in addition to legitimate uses, is used in the unlawful manufacture of a controlled substance or controlled substances.

(3) Person. Any individual, corporation, partnership, association, or other entity which manufactures, sells, transfers, or possesses a listed precursor chemical.

(Acts 1991, No. 91-589, p. 1085, § 1; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subdivision (2) deleted the second and third sentences.

§ 20-2-181. Board to designate by rule listed precursor chemicals; interim list established. [AL ST SEC 20-2-181]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) The Board of Pharmacy shall, within one year of July 29, 1991, designate by rule listed precursor chemicals.

(b) The Board of Pharmacy may subsequently by rule add chemicals as listed precursor chemicals following the criteria set forth in subdivision (2) of Section 20-2-180, and may also by rule delete any substance previously named as a listed precursor chemical. In no event shall a chemical also be designated as a listed precursor chemical if it has been determined to be a controlled substance or an immediate precursor chemical pursuant to the Alabama Uniform Controlled Substances Act, Section 20-2-1 et seq.

(c) If any chemical is designated or deleted as a listed precursor chemical under federal law and notice thereof is given to the Board of Pharmacy, the board shall similarly list or delete the substance under this article after the expiration of 30 days from publication in the federal register of a final rule or order designating or deleting such substance as a listed precursor chemical, unless, within 30 days from publication in the federal register of the final rule or order, the board objects to the designation or deletion. In that case, the board shall publish the reasons for objection in the Alabama Administrative Monthly and shall afford all interested parties an opportunity to submit written comments and to be heard. At the conclusion of the hearing and the comment period, the State Board of Pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the designation or deletion by the board, the designation or deletion is stayed until the board publishes its decision. Notwithstanding the provisions of the Alabama Administrative Procedure Act, Sections 41-22-1 through 41-22-27, no further rulemaking or administrative proceedings shall be required of the board with respect to the designation or deletion of substances similarly designated or deleted under federal law.

(d) Until the Board of Pharmacy adopts a rule designating listed precursor chemicals, as required by subsection (a), the following chemicals or substances are hereby deemed listed precursor chemicals:

- (1) Acetic anhydride;
- (2) Anthranilic acid and its salts;
- (3) Benzyl cyanide;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Ergonovine and its salts;
- (6) Ergotamine and its salts;
- (7) Hydriodic acid;
- (8) Isosafrol;
- (9) Methylamine;
- (10) N-Acetylanthranilic acid and its salts;
- (11) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (12) Phenylacetic acid and its salts;
- (13) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (14) Piperidine and its salts;
- (15) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (16) Safrole; and
- (17) 3,4-Methylenedioxyphenyl-2-propanone.

(Acts 1991, No. 91-589, p. 1085, § 2.)

§ 20-2-182. License required for furnishing listed precursor chemical; licensing procedure; content of license; record of transactions. [AL ST SEC 20-2-182]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, manufactures, purchases for resale, or otherwise furnishes any listed precursor chemical defined in Section 20-2-181 must first obtain a license annually from the Board of Pharmacy.

(b) The procedure for obtaining a license to sell, transfer, manufacture, purchase for resale, or otherwise furnish a listed precursor chemical shall be as follows:

- (1) Obtain an application from the Board of Pharmacy;
- (2) Submit the application to the Board of Pharmacy;
- (3) Demonstrate a legitimate reason to sell, transfer, or otherwise furnish listed precursor chemicals.

(c) The content of the application for a license shall include, but not be limited to, the following information:

- (1) Name of business;
- (2) Address of business other than a post office box number;
- (3) Phone number of business;
- (4) Names and addresses of business owners;
- (5) Location of storage facility;
- (6) Identification of listed precursor chemicals to be sold; and
- (7) Criminal history of applicant.

(d) A licensee shall make an accurate and legible record of any transaction of listed precursor chemicals and maintain such record together with the following records for a period of at least two years:

- (1) Inventory on hand;
- (2) Purchase receipts;
- (3) Manufacturing records including the date and quantity of any listed precursor chemicals manufactured, the quantity of listed precursor chemicals used in manufacturing any other substance or product, and the inventory on hand of listed precursor chemicals after the manufacturing of any other substance or product;
- (4) Copies of the Board of Pharmacy licenses or permits;
- (5) Records of substance disposal.

(Acts 1991, No. 91-589, p. 1085, § 3.)

§ 20-2-183. Permit for possession; requirements to receive permit; copies. [AL ST SEC 20-2-183]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) Any person having a legitimate need for using a listed precursor chemical defined in Section 20-2-181, shall apply in person to the board of pharmacy for a permit to possess such chemical each time said chemical is obtained.

(b) The following must be submitted in person to the Board of Pharmacy to receive a permit for possession of listed precursor chemicals:

- (1) A driver's license number or other personal identification certificate number, date of birth, residential or mailing address, other than a post office box number, and a driver's license or personal identification card issued by the Department of Public Safety which contains a photograph of the recipient;
- (2) In the event the applicant is a corporation, the information in this section shall be required of the person making application for the permit. In addition, the person making application for the permit on behalf of a corporation shall disclose his relationship to the corporation;
- (3) The make, model, model year, state where licensed, and license number of the motor vehicle owned and operated by the recipient;
- (4) The serial number of the permit issued in the name of the recipient by the Board of Pharmacy pursuant to this section, which shall be obtained from personal observation of the permit;
- (5) A complete description of how the chemical is to be used; and
- (6) The location where the chemical is to be stored and used.

(c) The permit shall consist of three parts, including:

- (1) The original to be retained by the Board of Pharmacy;
- (2) A copy to be retained by the manufacturer, wholesaler, retailer, or other person furnishing listed precursor chemicals; and
- (3) A copy to be attached to the container of the listed precursor chemical and to be kept with the chemicals at all times.

(Acts 1991, No. 91-589, p. 1085, § 4.)

§ 20-2-184. Denial, suspension or revocation of license. [AL ST SEC 20-2-184]

Current through End of 2003 Organizational, Regular and 1st Special Session.

A license or permit, obtained pursuant to Section 20-2-182 or 20-2-183, shall be denied, suspended, or revoked by the Board of Pharmacy upon finding that the license or permit holder has:

- (1) Furnished false or fraudulent material information in any application filed under this article;
- (2) Been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Violated the provisions of Chapter 23 of Title 34; or
- (5) Failed to maintain effective controls against the diversion of said precursors to unauthorized persons or entities.

(Acts 1991, No. 91-589, p. 1085, § 5.)

§ 20-2-185. Reporting transactions -- Board to supply form. [AL ST SEC 20-2-185]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) Any person who sells, transfers, purchases for resale, or otherwise furnishes to a person in this state a listed precursor chemical shall submit a report of the transaction on a form obtained from the Board of Pharmacy that includes the information required by Section 20-2-183.

(b) The Board of Pharmacy shall supply, upon the request of any manufacturer, wholesaler, retailer, or other person who sells, transfers, purchases for resale, or otherwise furnishes a listed precursor chemical a form for the submission of:

- (1) The report required by subsection (a);
- (2) The name and measured amount of the listed precursor chemical delivered;
- (3) Such other information as the board may require pursuant to agency rule of the Board of Pharmacy.

(Acts 1991, No. 91-589, p. 1085, § 6.)

§ 20-2-186. Procedure upon discovery of loss or theft of chemicals -- Records -- Audits and inspections of records. [AL ST SEC 20-2-186]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) Any person, licensed or permitted, who discovers a loss or theft of, or disposes of a chemical listed in Section 20-2-181 shall:

- (1) Submit a report of the loss, theft, or disposal to the Board of Pharmacy no later than the third business day after the date the manufacturer, wholesaler, retailer, or other person discovers the loss or theft, or after the actual disposal; and
- (2) Include the amount of loss, theft, or disposal in the report. Any disposal of listed precursor chemicals must be done in accordance with the rules and regulations of the United States Environmental Protection Administration and shall be performed at the expense of the permit or license holder.

(b) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses, uses, or otherwise furnishes any listed precursor chemical shall:

- (1) Maintain records as specified in Section 20-2-182, or as prescribed by the rule of the Board of Pharmacy;
- (2) Permit law enforcement authorities to conduct on-site audits, inspections or inventories, and inspect all records made in accordance with this article at any reasonable time; and
- (3) Cooperate with the audit, inspection or inventory, or copying of any records.

(Acts 1991, No. 91-589, p. 1085, § 7.)

§ 20-2-187. Adoption of rules; administrative fees authorized. [AL ST SEC 20-2-187]

Current through End of 2003 Organizational, Regular and 1st Special Session.

The Board of Pharmacy may adopt reasonable rules to effectuate the provisions of this article. The board is further authorized to charge reasonable fees to defray expenses incurred in issuing any licenses or permits or maintaining any records or forms required by this article and in the administration of the provisions of this article. Any fees to defray expenses as set forth above or in administering the provisions of this article shall be retained by the Board of Pharmacy.
(Acts 1991, No. 91-589, p. 1085, § 8.)

§ 20-2-188. Exceptions to requirements for sale or transfer of chemicals, and to licensing requirements. [AL ST SEC 20-2-188]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) The provisions of this article shall not apply to the sale or transfer of products which include a listed precursor chemical if the product may be sold lawfully with a prescription or over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. section 301 et seq.), or under a rule adopted pursuant to that act.

(b) Notwithstanding any other provision of this article, no person shall be required to obtain a listed precursor license or permit for the sale, receipt, transfer, manufacture, or possession of a listed precursor chemical when:

(1) Such person is a duly licensed physician, dentist, veterinarian, podiatrist, or pharmacist, when the sale, receipt, transfer, manufacture, or possession of such listed precursor chemical is a transaction otherwise lawfully authorized;

(2) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(3) A delivery of a listed precursor chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman.

(Acts 1991, No. 91-589, p. 1085, § 9.)

§ 20-2-189. Property rights in chemicals forfeited upon violation. [AL ST SEC 20-2-189]

Current through End of 2003 Organizational, Regular and 1st Special Session.

All listed precursor chemicals as defined in Section 20-2-181, which have been, or which are intended to be sold, transferred, manufactured, purchased for resale, possessed or otherwise transferred in violation of a provision of this article shall be subject to forfeiture to the state and no property right shall exist in them.

(Acts 1991, No. 91-589, p. 1085, § 10.)

§ 20-2-190. Penalties. [AL ST SEC 20-2-190]

Current through End of 2003 Organizational, Regular and 1st Special Session.

(a) Any person who manufactures, sells, transfers, receives or possesses a listed precursor chemical violates this article if the person:

(1) Knowingly fails to comply with the reporting requirements of this article;

(2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;

(3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

(b) A person who possesses, sells, transfers, or otherwise furnishes a listed precursor chemical commits an offense if the person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance. An offense under this subsection shall constitute a Class B felony.

(Acts 1991, No. 91-589, p. 1085, § 11.)

CHAPTER 38. IMPAIRED PROFESSIONALS' COMMITTEE.

§ 34-38-1. Definitions. [AL ST SEC 34-38-1]

Current through End of 2003 Organizational, Regular and 1st Special Session.

For the purposes of this chapter, the following terms shall have the meaning respectively ascribed to them by this section, unless the context clearly provides for another:

- (1) Dentist. Any person who is a dentist or dental practitioner pursuant to the definition of Section 6-5-481, as amended.
- (2) Pharmacist. Any person who is a pharmacist as defined in Section 34-23-1, as amended, and pharmacy externs and interns registered by the Board of Pharmacy under Rule 680-X-2-.16 of the Alabama Administrative Code.
- (3) Boards. Individually and/or jointly: The Board of Dental Examiners and the Board of Pharmacy.
- (4) Committee. The Alabama Impaired Professionals' Committee.
- (5) Hygienist. Any person who is a hygienist pursuant to the provisions of Sections 34-9-26 and 34-9-27. (Acts 1988, No. 88-334, p. 505, § 1; Acts 1989, No. 89-860, p. 1713, § 1.)

§ 34-38-2. Duty of Board of Dental Examiners and Board of Pharmacy to promote early treatment, etc., of individuals impaired by illness, inebriation, etc.; Alabama Impaired Professionals' Committee; expenses; competitive bidding not required. [AL ST SEC 34-38-2]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

It shall be the duty and obligation of the State Board of Dental Examiners and the State Board of Pharmacy to promote the early identification, intervention, treatment and rehabilitation of individuals within the respective jurisdiction, licensed to practice in the State of Alabama, who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. For the purposes of this chapter, the term "impaired" shall mean the inability of a dentist, hygienist or pharmacist to practice with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. In order to carry out this obligation, each board, individually or jointly, is hereby empowered to contract with any nonprofit corporation, health provider or professional association for the purpose of creating, supporting and maintaining a committee of professionals to be designated the Alabama Impaired Professionals' Committee. The committee shall consist of not less than three nor more than 15 professionals licensed to practice dentistry or pharmacy in the State of Alabama, and selected in a manner prescribed by the board or boards. The authority of the Alabama Impaired Professionals' Committee shall not supersede the authority of the board or boards to take disciplinary action against individuals subject to this chapter. Nothing in this chapter shall limit the power and authority of the board or boards to discipline an impaired individual subject to its jurisdiction; provided that where an individual is impaired and currently in need of intervention, treatment or rehabilitation and such individual is currently participating in programs or rehabilitation recommended by the committee, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual; and further provided that where the board or boards, upon reasonable cause to believe an individual subject to its jurisdiction is impaired, has referred such individual to the committee for evaluation, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual. The board, or boards, is authorized to expend such funds as are available to it as deemed necessary to adequately provide for the operational expenses of the Alabama Impaired Professionals' Committee, including, but not limited to, the actual cost of travel, office overhead and personnel expense and compensation for the members of the committee and its staff; provided that operational expenses of the Alabama Impaired Professionals' Committee shall not include the cost of treatment or rehabilitation

programs recommended by the committee to individuals subject to this chapter. The funds provided by the board or boards, under this section for the purposes stated herein shall not be subject to any provision of law requiring competitive bidding.

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-3. Authority of board or boards to contract for Impaired Professionals' Committee to undertake certain functions. [AL ST SEC 34-38-3]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

The board or boards shall have the authority to enter into an agreement with a nonprofit corporation, health provider or professional association for the Alabama Impaired Professionals' Committee to undertake those functions and responsibilities specified in the agreement. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired professional to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired professional;
- (6) Providing post-treatment monitoring and support of rehabilitated impaired professional; and
- (7) Performing such other activities as agreed upon by the respective board or boards and the Alabama


Impaired Professionals' Committee.

(Acts 1988, No. 88-334, p. 505, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-4. Procedures for reporting impaired professional program activity and disclosure and joint review of information. [AL ST SEC 34-38-4]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References

The Alabama Impaired Professionals' Committee shall develop procedures in consultation with such board or boards for:


- (1) Periodic reporting of statistical information regarding impaired professional program activity;
- (2) Periodic disclosure and joint review of such information as the board or boards may deem appropriate

regarding reports received, contracts or investigations made and the disposition of each report, provided, however, that the committee shall not disclose any personally identifiable information except as provided in Section 34-38-7.
(Acts 1988, No. 88-334, p. 505, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-5. Nonliability of Impaired Professionals' Committee personnel, etc., for actions within scope of function. [AL ST SEC 34-38-5]

Current through End of 2003 Organizational, Regular and 1st Special Session.


References

Any dentist licensed to practice in the State of Alabama, or pharmacist, who shall be duly appointed to serve as a member of the Alabama Impaired Professionals' Committee and any auxiliary personnel, consultants, attorneys, or other employees of the committee shall not be liable to any person for any claim for damages as a result of any decision, opinion, investigation or action taken by the committee or any individual member of the committee made by him within the scope of his function as a member of the committee if such decision, opinion, investigation or action was taken without malice and on a reasonable belief that such action or recommendation was warranted by the facts that were then available. No nonprofit corporation, professional association, health provider or state or county association that contracts with, or receives funds from, board or boards for the creation, support and operation of the Alabama Impaired Professionals' Committee shall be liable to any person for any claim for damages for any action taken or recommendation made by the Alabama Impaired Professionals' Committee, or any member thereof, or any auxiliary personnel, consultant, attorney, or employee of such committee.
(Acts 1988, No. 88-334, p. 505, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-6. Confidentiality of information, records and proceedings. [AL ST SEC 34-38-6]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


All information, interviews, reports, statements, memorandums, or other documents furnished to or produced by the Alabama Impaired Professionals' Committee and any findings, conclusions, recommendations or reports resulting from the investigations, interventions, treatment or rehabilitation, or other related proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee, the members thereof and the boards, only in the exercise of the proper functions of the committee and the boards, and shall not be public records nor available for court subpoena or

for discovery proceedings. Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Impaired Professionals' Committee.
(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-7. Annual report. [AL ST SEC 34-38-7]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


It shall be the duty of the Alabama Impaired Professionals' Committee to render an annual report to each board or boards, concerning the operations and proceedings of the committee for the preceding year. In addition, the committee shall promptly report to the respective boards any individual within their jurisdiction who, in the opinion of the committee is unable to practice the standards of his or her profession with reasonable skill and safety to patients, by reason of illness, inebriation, excessive use of drugs, controlled substances, narcotics, alcohol, chemicals or other dependency forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession and appears that such individual is currently in need of intervention, treatment or rehabilitation. A report to the Alabama Impaired Professionals' Committee shall be deemed to be a report to the board or boards for the purposes of any mandated reporting of professional impairment otherwise provided for by the statutes of this state.

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 4.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-38-8. Evaluation of professional who is believed to be impaired; report of findings. [AL ST SEC 34-38-8]

Current through End of 2003 Organizational, Regular and 1st Special Session.

References


If the board or boards has reasonable cause to believe that a professional is impaired, such board may cause an evaluation of such professional to be conducted by the Alabama Impaired Professionals' Committee, for the purpose of determining if there is an impairment. The Alabama Impaired Professionals' Committee shall report the findings of its evaluation to the respective board or boards.

(Acts 1988, No. 88-334, p. 505, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

Board Members

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Executive Director
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ALABAMA

BOARD OF PHARMACY



April 12, 2004

MEMBERS 2004

President
CLAY WILSON

Vice-President
LYNDA STAGGS

Treasurer
JACKSON COMO

RICK STEPHENS

ROLAND NELSON

Tony Yarbrough
Examiners of Public Accounts
50 North Ripley Street, Room 3201
Montgomery, Alabama 36130-2101

Dear Mr. Yarbrough:

As per your request, please find listed below the name, mailing address, expiration of term, and status of all current board members:

CLAY WILSON, President
4220 Woodbine Lane
Birmingham, Alabama 35226
Term expires 12-31-2004

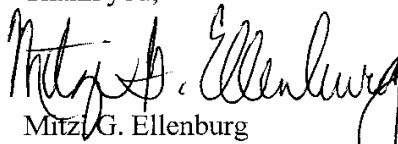
LYNDA STAGGS, Vice-President
827 Mira Vista Drive
Huntsville, Alabama 35802
Term expires 12-31-2005

DR. JACKSON COMO, Treasurer
1431 Badham Drive
Birmingham, Alabama 35226
Term expires 12-31-2006

RICK STEPHENS, Member
2218 Trenton Drive
Tuscaloosa, Alabama 35406
Term expires 12-31-2007

ROLAND NELSON, Member
1859 Lakeridge Road
Birmingham, Alabama 35216
Term expires 12-31-2008

Thank you,


Mitzi G. Ellenburg
Asst. to the Executive Director
me

ALABAMA

BOARD OF PHARMACY



JERRY MOORE
Executive Director

1 Perimeter Park South
Suite 425 So.
Birmingham, Alabama 35243

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MEMBERS 2004

President
CLAY WILSON

Vice-President
LYNDA STAGGS

Treasurer
JACKSON COMO

RICK STEPHENS

ROLAND NELSON

August 10, 2004

John E. Norris
Director, Operational Division
State of Alabama
Department of Examiners of Public Accounts

VIA FACSIMILE: 334-242-1775

Dear Mr. Norris:

Please find attached the responses to the significant items appearing in your report to the Sunset Committee on the operations of the Board of Pharmacy.

If I may be of further assistance, please do not hesitate to contact me at 205-967-0130 or email jmoore@albop.com.

Sincerely,


Jerry Moore, R.Ph., J.D.
Executive Director

Examiner's report

1. The Board of Pharmacy failed to comply with the state's bid law on two occasions.

Response: While the Board did not intentionally violate the Code of Alabama 1975, Section 41-16-20, it ultimately did not meet all of the requirements of this section. The Board has implemented stricter guidelines for purchases of equipment, which cost seven thousand five hundred dollars (\$7,500.00) or more to insure full compliance in the future.

2. The Board of Pharmacy is charging mail-order houses an unauthorized fee and is requiring an additional permit not authorized by law.

Response: The following rule was adopted July, 17, 1967, and became effective October 1, 1967:

680-x-2-.07 **MAIL ORDER PRESCRIPTIONS.**

(1) Every applicant for a Mail Order Permit or Permits pursuant to the provisions of Code of Alabama 1975, §§34-23-30, 34-23-31, shall pay a fee of \$25.00 annually. This fee in the case of pharmacies located within the State of Alabama, whose majority of their business is through mail order, shall be in addition to the regular \$25.00 renewal fee paid for registration in Alabama. On the first registration by a Pharmacy located outside of the State of Alabama, the provisions of Code of Alabama 1975, §34-23-30 shall apply to such first registration.

(2) Registration. No Nonresident Pharmacy shall ship, mail or deliver prescription drugs and/or devices to a patient in this state unless registered by the Alabama State Board of Pharmacy.

(3) Agent of Record. Each Nonresident Pharmacy that ships, mails, or delivers prescription drugs and/or devices to a patient in the state of Alabama shall designate a resident agent in Alabama for service of process. Any such Nonresident Pharmacy that does not so designate a registered agent and that ships, mails or delivers prescription drugs and/or devices in the state of Alabama shall be deemed an appointment by such Nonresident Pharmacy of the Secretary of State to be its true and lawful attorney upon whom may be served all legal process in any action or proceedings against such pharmacy growing out of or arising from such delivery. A copy of any such service of process shall be mailed to the Nonresident Pharmacy by the complaining party by certified mail, return receipt requested, postage prepaid, at the address of such Nonresident Pharmacy as designated on the pharmacy's application for registration in this

state. If any such pharmacy is not licensed in this state, service on the Secretary of State of Alabama only shall be sufficient service.

(4) **Conditions of Registration.** As conditions of receiving a permit, the Nonresident Pharmacy must comply with the following:

(a) Be registered and in a good standing in the State in which such pharmacy is located;

(b) Maintain, in readily retrievable form, records of legend drugs and/or devices dispensed to Alabama patients;

(c) Supply upon request, all information needed by the Alabama Board of Pharmacy to carry out the Board's responsibilities under the statutes and regulations pertaining to Nonresident Pharmacies;

(d) Maintain pharmacy hours that permit the timely dispensing of drugs to Alabama patients and provide reasonable access for the Alabama patients to consult with a licensed pharmacist about such patients' medications.

(e) Provide toll-free telephone communication consultation between an Alabama patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that said telephone number(s) will be placed upon the label affixed to each legend drug container;

5. **Compliance.** Each nonresident Pharmacy shall comply with the following:

(a) All statutory and regulatory requirements of the State of Alabama for controlled substances, including those that are different from federal law or regulation.

(b) All the statutory and regulatory requirements of the state of Alabama regarding drug product selection laws.

(c) Labeling of all prescriptions dispensed, to include but not limited to identification of the product and quantity dispensed.

(d) All the statutory and regulatory requirements of the State of Alabama for the dispensing of prescriptions in accordance with the quantities indicated by the prescriber.

6. **Policy and Procedure Manual.** Each Nonresident Pharmacy shall develop and provide the resident board of pharmacy with a policy and procedure manual that sets forth:

(a) Normal delivery protocols and times;

(b) The procedure to be followed if the patient's medication is not available at the Nonresident Pharmacy, or if delivery will be delayed beyond the normal delivery time;

(c) The procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the Nonresident Pharmacy at the earliest possible time (i.e. courier delivery), or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time;

(d) The procedure to be followed when the Nonresident Pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available.

7. **Disciplinary Action.** Except in emergencies that constitute an immediate threat to public health and require prompt action by the Board, the Alabama Board of Pharmacy shall file a complaint against any Nonresident Pharmacy that violates any statute or regulation of Alabama for conduct, which causes serious bodily or psychological injury to a resident of this state. This complaint shall be filed with the Board in which the Nonresident Pharmacy is located. If the Board in the state in which the Nonresident Pharmacy is based fails to resolve the violation complained of within a reasonable time, (not less than forty-five (45) days from the date that the complaint is filed), disciplinary proceedings may be instituted in Alabama before the Board.

Author: James W. McLane, Executive Secretary

Statutory Authority: Code of Alabama 1975, §34-23-92

History: Adopted July 17, 1967; Effective October 1, 1967;
Amended: Filed June 1, 1982; Amended: April 15, 1986; Amended: Filed March 28, 1990; Effective: September 1, 1990.

The rule was subsequently amended on April 15, 1986, and again on September 1, 1990, with all three (3) versions requiring every applicant to obtain a mail order permit and pay a fee of twenty-five dollars (\$25.00).

The Board has had numerous audits by the Examiners of Public Accounts since 1968 and this issue has never been raised. Subsequently, the Board has quit charging a fee for the mail order permit.

Since the Code of Alabama 1975, Section 34-23-31 requires the Board to issue a permit to mail order pharmacies, we would ask the Sunset Committee to amend §34-23-31 to allow a fee to be collected for the issuance of a mail order permit.

3. The Board of Pharmacy is charging fees to medical retailers that do not comply with a court ordered settlement.

The Board incorrectly applied a lesser fee of twenty-five dollars (\$25.00) to a permit that had a change in ownership, change in name or a change in location. Once this error was brought to the Board's attention the necessary changes were immediately implemented to insure the correct fee would be collected and a new permit issued in the aforementioned situations.

4. There is no statute or administrative rule providing procedures for documentation, receipt, or investigation of complaints relating to Board licenses and /or illegal practices. There are no procedures for comprehensively recording, monitoring and reporting the progress and resolution of complaints.

Response: Through the years complaints have been monitored and investigated until a final resolution has been determined. This may be accomplished either through an Administrative Hearing before the Board or a determination that there was no violations of the Pharmacy Practice Act. The Chief Investigator implemented a program in January of 2004 where each complaint is logged showing the date of the complaint, the investigator assigned, date of assignment, date of completion and the final disposition.

All complaints have some type of resolution whether it is through a determination that no violation occurred, a verbal warning, written warning, consent order or an Administrative Hearing.

There are monthly meetings conducted by the Chief Investigator where each complaint or investigation is discussed in detail as to the status of each complaint. The Investigators turn in a monthly report that outlines the status of each complaint.

The Board is always receptive to suggestions that will make its operation more effective.

5. A review of the Board's resolution of complaints revealed a weakness in complaint notification procedures utilized by the Board.

Response: All complainants are notified of the outcome of their complaint, whether it is by a phone call, e-mail or a formal letter. The Board has now instituted a policy whereby all complainants will be notified in writing as to resolution of their complaint.

If a violation had occurred the respondent would be made aware of the outcome through a verbal warning, written warning, consent order, or an Administrative Hearing. If the investigation of a complaint resulted in no violations the respondent was informed verbally, by the Investigator, at the conclusion of the investigation.

The Board continually strives to make improvements in all of its policies and procedures and the handling of complaint notification will be no exception. The Board will review any weakness and make the necessary changes.

6. Recent Legislation changed the renewal of licenses and permits from annual to biennial, amended fees and codified administrative rules regarding continuing education. The new legislation is in conflict with existing statute.

The Board would ask the Sunset Committee to amend the appropriate statutes to remove any conflicts.

7. At its meeting of January 28, 1986, the Board formally established a policy of not paying its employees for unused leave at termination. The Board now appears to be awarding payment for unused annual leave at termination on a case-by-case basis rather than adhering to its policy.

Response: When the Board approved the payments for accumulated unused annual and sick leave in June 2003 it was the intent of the Board that this schedule of payment become the new policy of the Board. Inadvertently, this action was not formally adopted as the new policy but has been utilized without bias to all subsequent retirements.

The Board has since formally adopted the State Personnel Department and Merit System's Laws (§36-26-35.1 and §36-26-36) as established policy for payment of accumulated unused annual or sick leave.